UNITED NATIONS

General Assembly

FOR[illegible]Y-NINTH SESSION

Official Records

SIXTH COMMITTEE
29th meeting
held on
Tuesday, 8 November 1994
at 10 a.m.
New York

SUMMARY RECORD OF THE 29th MEETING

Chairman:	Mr. CHATURVEDI (Vice-Chairman)	(India)
later:	Mr. LAMPTEY (Chairman)	(Ghana)

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25 November 1994

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In the absence of Mr. Lamptey (Ghana), Mr. Chaturvedi (India), Vice-Chairman, took the Chair.

The meeting was called to order at 10.35 a.m.

AGENDA ITEM 141: QUESTION OF RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE (A/49/22 and A/C.6/49/L.4)

1. Mr. KIRSCH (Canada), Chairman of the Working Group on the question of responsibility for attacks on United Nations and associated personnel, introducing the report of the Working Group contained in document A/C.6/49/L.4, said that the Working Group had been established in response to widespread concerns over the safety of United Nations personnel, prompted by a significant increase in the number and gravity of attacks against United Nations peace-keepers and other personnel. In his report on the matter, contained in document A/48/349-S/26358, the Secretary-General had recommended the elaboration of a new international instrument relating to the security on safety of United Nations forces and personnel.

2. On the initiative of New Zealand, the item had been included in the agenda of the forty-eighth session of the General Assembly and two draft conventions tabled by Ukraine and New Zealand. Following intensive, open-ended negotiations, which had been well attended by representatives of all regions, as well as by government experts, representatives of the United Nations Secretariat and observers from specialized agencies and the International Committee of the Red Cross (ICRC), those drafts had been combined initially into the consolidated negotiating text, contained in the report of the Ad Hoc Committee on the Elaboration of an International Convention Dealing with the Safety and Security of United Nations and Associated Personnel (A/49/22, annex I), and subsequently into the text contained in the annex to the Working Group's report.

3. He noted that, notwithstanding the short time in which the draft instrument had been developed, in response both to the request contained in General Assembly resolution 48/37 and to the inherent urgency of the task, it was a highly professional document. That expeditious preparation had been made possible by the solid foundation of the draft Convention, which was firmly based on existing international instruments. He therefore foresaw no obstacle to its adoption by the Committee.

4. The text synthesized the approaches contained in the drafts prepared by New Zealand and Ukraine, the first providing for individual responsibility for those who attack United Nations personnel and the second endeavouring to consolidate aspects of existing law and practice dealing with the security and safety of such personnel. The final text had been arrived at through a process of difficult compromise, yet differed only slightly from the consolidated negotiating text developed by the Ad Hoc Committee at the end of its August 1994 session. The differences consisted of a few points relating to definitions and

the scope of application of the convention; technical changes in its criminal law parts; and certain additions, including provisions on compensation, on the rights of States to withdraw personnel and on meetings to review the implementation of the convention.

5. As it stood, the draft Convention essentially contained three types of provisions: those dealing with criminal law; those dealing with the rights and obligations of the United Nations and associated personnel and of host and transit States; and those defining the scope of application of the convention.

6. The criminal law provisions, contained in articles 9 to 18, were broadly based on a number of anti-terrorist conventions, including the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, the 1979 International Convention against the Taking of Hostages and the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, and were designed to ensure the effective punishment of those responsible for attacks on United Nations and associated personnel by guaranteeing prosecution or extradition followed by appropriate penalties, thus eliminating safe havens for such attackers. Throughout the negotiations, efforts had been made to ensure that the provisions of the convention were consistent with those of previous conventions with the same legal effect, from the standpoint of international criminal law.

7. The provisions aimed at consolidating and developing existing law, contained in articles 3 to 8 and 20 to 21, covered obligations of certain States, United Nations personnel and the United Nations itself and were extensively based on existing law and practice as reflected in a number of status-of-forces agreements. Thus, host States were obliged to ensure the safety of United Nations personnel; transit States must facilitate the unimpeded transit of personnel and their equipment; United Nations personnel were obliged to respect the laws of the host and transit States; and the United Nations and host States were obliged to conclude status-of-forces agreements. Articles 20 and 21 contained savings clauses, establishing that nothing in the convention affected the applicability of humanitarian law and human rights standards to and by United Nations and associated personnel; the rights and obligations of States regarding the consent to entry of persons into their territory; the obligation of the United Nations to act in accordance with the terms of the mandate of a United Nations operation; the right of States to withdraw their personnel from such operations; the entitlement to appropriate compensation payable in certain situations attributable to peace-keeping service; and the right of self-defence.

8. Finally, the provisions establishing the scope of application and definitions, contained in articles 1 and 2, had proved the most difficult because they were very specific to the convention. As currently worded, the convention applied to all operations established with the purpose of maintaining or restoring peace and security, except enforcement operations in which personnel were engaged as combatants against organized armed forces and to which the law of international conflicts applied. The convention also applied to other operations where the General Assembly or the Security Council had declared

that there was an exceptional risk to the safety of personnel. Under those provisions, a broad range of personnel was covered.

9. While the draft Convention might not meet all the objectives of every delegation or concerned institution, it was a clear improvement over any existing provisions, offering a delicately balanced package of rights and obligations made possible by the spirit of compromise which had informed the negotiating process. Given the sound basis of international law underlying many of the provisions of the text, the open character of the negotiating process and the limited number of changes made to the comprehensive negotiating text, he hoped that the draft Convention would be adopted by the Committee.

10. Crown Prince FREDERIK (Denmark), speaking on behalf of the five Nordic countries, said that the Nordic countries had always taken a strong interest in the elaboration of an international convention on the safety of United Nations and associated personnel. Those countries currently had more than 3,900 soldiers deployed in the former Yugoslavia and were deeply convinced of the urgent need for further measures to protect United Nations and associated personnel.

11. The draft Convention before the Committee represented the first set of basic rules for the protection of United Nations personnel operating in areas of armed conflict as well as of criminal law provisions establishing universal jurisdiction for the prosecution and punishment of individuals responsible for attacks on United Nations and associated personnel. The accomplishment of that task within one year after the adoption of the relevant decision at the forty-eighth session demonstrated how swiftly the United Nations could act when political will and legal expertise worked together in a constructive spirit.

12. The Nordic countries attached particular importance to the interpretation given during the negotiating process to the term "the Secretary-General of the United Nations", contained in article 1 (b) (ii), which also covered other parts of the United Nations system such as funds, programmes and offices, notably, the Office of the United Nations High Commissioner for Refugees (UNHCR). In addition, they stressed the need to ensure that there was no gap between the application of the convention and the rules of international humanitarian law applicable during armed conflict.

13. While he conceded that the convention might still have some deficiencies, its main thrust, namely, that attacks against or other mistreatment of personnel acting on behalf of the United Nations were unjustifiable and wholly unacceptable, was clearly stated in precise legal terms. Problems arising with regard to the application of the convention could be addressed during the review meetings provided for in article 23, included on the initiative of the Nordic countries. The protection of United Nations personnel was an ongoing process, in which the convention before the Committee represented a major step forward, and the Nordic countries therefore strongly recommended its adoption and opening for signature during the current session of the General Assembly.

14. Mr. van BOHEMEN (New Zealand) said that it had been at New Zealand's initiative that item 141 had been placed on the agenda of the Sixth Committee the previous year. His delegation was thus especially pleased that, 12 months later, the Committee had before it the text of the draft Convention (A/C.6/49/L.4, annex) that had been negotiated over the intervening year.

15. It had been at New Zealand's insistence that the working groups, and particularly the Ad Hoc Committee, had been thrown open to the participation of all States, thus marking a departure from the Sixth Committee's previous practice of establishing bodies of limited composition to conduct such negotiations. New Zealand had taken the view that it was essential that all States required to finance peace-keeping and other United Nations operations and which might be asked to provide personnel for such operations should have the opportunity to be fully engaged in the negotiations. The draft before the Committee proved the efficacy of that negotiating method.

16. The fact that a draft Convention had been negotiated in the brief space of one year was attributable to three factors. First, there had been no doubt as to the urgency of the task: in 1993, 201 peace-keeping personnel had been killed while on service with the United Nations; in the first 10 months of 1994, 126 peace-keeping personnel had already been killed; and in the period from 1 July 1993 to 17 September 1994, 18 United Nations personnel engaged in non-peace-keeping operations had been killed. Such a death rate for persons acting in the cause of peace and on behalf of the international community was unacceptable. The rapid negotiation of the draft Convention showed that member States recognized and accepted a responsibility to do something to discourage that carnage and to bring to justice those guilty of such outrages.

17. The second factor was that the Ad Hoc Committee had had a single working document before it at the start of its deliberations. While difficult to achieve, the merging of the separate New Zealand and Ukrainian draft conventions had paid a real dividend.

18. Thirdly, the subject-matter addressed by the convention had deliberately been kept within a reasonably narrow focus and had been dealt with largely on the basis of existing precedents. The convention should be regarded as an extension of an already well-established body of rules, and as an incremental rather than a radical step forward in law-making. Those concerned at the rapid pace of the negotiations could rest assured that the outcome was fully in accordance with an established body of international law and would require no fundamental reconsideration by States of the laws and principles they had already applied to similar circumstances.

19. The most difficult issue in the negotiations had undoubtedly been the question of the scope of the convention. Which operations and which personnel should be covered? New Zealand's fundamental position had been that those most in need must be protected. That meant first of all the peace-keeping personnel and persons associated with peace-keeping operations. Within that category there was a special-risk category of persons operating in places such as Somalia, where there was no Government to provide protection, or Bosnia and

Herzegovina, where there were large areas over which the host Government was unable to exercise effective control. It had been in order to ensure the protection of those persons that his delegation and others had opposed proposals that the convention's coverage should be limited to consent-based operations under Chapter VI of the Charter. His delegation was satisfied that its position was reflected in the definition of "United Nations operation" contained in article 1 (c). At the same time, it felt that the references to consent in the preamble and article 20 provided an appropriate reflection of the importance of obtaining the consent and cooperation of host States in the performance of most peace-keeping operations.

20. Recognizing that those seeking to disrupt United Nations operations were as likely to target other United Nations and agency personnel in the vicinity of a peace-keeping operation as those actually engaged in the operation itself, New Zealand had considered that all such personnel operating in the area of an operation had to be covered. That aim had been achieved in article 1 (a) (ii). In addition, it had agreed strongly with the recommendation made by the Secretary-General and the agencies that any protections extended to a peace-keeping operation should also extend to contractual and non-governmental personnel carrying out activities in support of such an operation. His delegation was satisfied with the definitions of "United Nations personnel" and "associated personnel" contained in article 2 (a) and (b) in that regard.

21. There had been considerable discussion as to whether the scope of the convention should extend beyond those categories of operations and personnel. New Zealand would have supported extending the convention to all United Nations and agency personnel required to operate away from an established headquarters. However, it had recognized the force of the argument advanced, that there had to be exceptional circumstances to warrant departing from the standard position that the security and protection of United Nations personnel were primarily the responsibility of the host State. According to that view, there was no justification for extending the unusual protections of universal jurisdiction to persons able to seek protection and redress from a host Government. The compromise contained in article 2 (c) (ii) struck a balance between those positions. The mechanism whereby the convention's protections could be extended to other operations where the Security Council or the General Assembly had declared that there was an exceptional risk to the personnel involved ensured that people in real need could be protected without compromising the principle that universal jurisdiction was an exceptional measure. However, in cases of doubt the Council and the Assembly should err on the side of protection and should be prepared to make pre-emptive declarations, rather than waiting until persons had actually been killed or injured.

22. With the assistance of the delegation of Ukraine, his delegation had prepared and sought to circulate the text of a draft resolution whereby the General Assembly would adopt the convention and open it for signature. The draft was essentially a procedural one, and was based on the earlier precedents of conventions adopted by the Sixth Committee. The preamble recalled the factual background to the negotiations and the work undertaken in the Ad Hoc Committee and the Working Group at the current session. Paragraph 1 used the

standard formulation for the adoption and opening for signature of a convention. Paragraph 2 urged States to take appropriate measures for the protection of United Nations personnel in their territory. Paragraph 3, in recognition of the responsibilities of the different organs and bodies of the Organization and of the incremental nature of the measures taken, recommended that the safety of United Nations personnel should be kept under continuing review; and the final operative paragraph underlined the importance attached to the speedy conclusion of a comprehensive review of compensation arrangements. The text of the convention itself would be annexed to the resolution. Following the precedents of the conventions dealing with internationally protected persons, hostages and mercenaries, it was proposed that the convention should be kept open for signature until the end of the following calendar year (31 December 1995); that it should enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval; and that denunciation should take effect one year following its notification to the Secretary-General. His delegation hoped that those provisions would not be controversial, and that the draft resolution could be adopted speedily, without a vote. The subject-matter was familiar to all, and delay would thus not be to the advantage of any delegation.

23. Mr. MOTSYK (Ukraine) said that, given the relative infrequency with which the Sixth Committee adopted international treaties, the forthcoming adoption of a draft international convention dealing with the safety and security of United Nations and associated personnel was an event of more than ordinary significance. The process that had begun with the merging of the separate drafts proposed by Ukraine and New Zealand had culminated in the formulation of the current text, which represented a compromise between those two different but complementary approaches.

24. His delegation had first expressed the view that there was a need for a legal instrument to protect United Nations and associated personnel at the 1993 session of the Special Committee on Peace-keeping Operations, following the death of one Ukrainian serviceman and the wounding of three others as a result of deliberate shelling in Sarajevo in July 1992. Since that date, a total of 10 Ukrainian servicemen had been killed and 44 wounded in peace-keeping operations, in most cases as a result of intentional attacks. In recent years, the contingents of other States had suffered comparably heavy losses. Over the whole period during which the United Nations had been involved in peace-keeping operations, more than 1,100 peace-keepers had been killed and several thousand wounded. Meanwhile, the perpetrators of what were often deliberate and cold-blooded murders could not be brought to justice, in the absence of an international legal mechanism for that purpose. The purpose of the draft Convention was to fill that lacuna, thereby considerably enhancing the safety of United Nations and associated personnel.

25. The draft Convention contained a number of other very important provisions, concerning, inter alia, the right of self-defence of those personnel; the duty of States parties to ensure their safety and security; the duty to release or return personnel captured or detained; privileges and immunities of military and police components of an operation; and respect by such personnel for the rules

and regulations of the host State. As well as filling a number of gaps regarding the status of United Nations and associated personnel, those provisions were also aimed at enhancing the effectiveness of peace-keeping operations.

26. In view of the escalating casualties among United Nations and associated personnel, it was important to adopt the draft Convention at the current session of the General Assembly and to open it immediately for signature and subsequent ratification. His delegation thus very much hoped that the draft resolution prepared by the New Zealand and Ukrainian delegations would be supported by all delegations of the Sixth Committee and of the plenary Assembly. An overwhelming majority of delegations had taken an extremely active part in the various stages of elaboration of the draft Convention, and the result was the best possible compromise text. Some delegations might have reservations regarding certain provisions of the text: his own delegation, for instance, was not entirely satisfied with the wording of subparagraph (c) (ii) of article 1. It would also have preferred to see the amendment to article 4 proposed by the delegation of Canada adopted. Nevertheless, the text before the Committee represented a balance between the interests of member States in terms of rights and obligations. His delegation thus called upon the Committee to adopt the text of the draft Convention by consensus. If the convention was adopted, Ukraine intended to sign it immediately and to begin preparations for its ratification.

27. Mrs. FERNANDEZ de GURMENDI (Argentina) said that there was an imperative need to supplement the existing international rules so as to enable the Organization to confront adequately the new challenges arising from its more active role in the maintenance of international peace and security. The ever more numerous, ambitious and complex operations established by the United Nations and the exponential increase in the number of military and civilian personnel assigned to them had, unfortunately, been accompanied by a disproportionate increase in the number of attacks against United Nations personnel. Her delegation therefore welcomed the completion of the draft Convention, which demonstrated the advantages of building up the corpus of international law through progressive additions to and improvements in existing norms.

28. On the one hand, the draft Convention reflected United Nations practice in the area of peace-keeping operations, as embodied in the status-of-forces agreements concluded between the Organization and host States. On the other hand, in terms of its enforcement machinery, the draft Convention was modeled on the anti-terrorist conventions concluded since 1973; like them, it embodied the obligation to extradite or prosecute, as well as the now standard provisions relating to the establishment of a universal jurisdiction.

29. The major challenge involved in preparing the draft Convention had been the definition of the problem to be solved. The determination of which operations and personnel should be covered by the draft provisions had, from the outset, been the most sensitive and time-consuming issue discussed by the Ad Hoc Committee and later by the Working Group. Because of the growing complexity of current peace-keeping operations and the multidimensional and sometimes changing

nature of their mandates, simple definitions based on a single parameter, such as the consent of the host State, were unfeasible.

30. In the course of the debate, it had become apparent that to limit the scope of the draft Convention to United Nations personnel assigned to peace-keeping operations, as initially envisaged, was overly restrictive. The question then arose as to whether other operations carried out by competent organs of the United Nations should be included and, if so, which ones. It had been necessary to strike a balance between various points of view. Her delegation believed that the compromise reflected in the text would make for the widest possible acceptance of the draft Convention by the international community. Accordingly, her delegation supported the recommendation of the draft Convention for adoption by the General Assembly and ratification by all States.

31. Mr. TAN (Singapore) said it was appropriate that the international community should put in place measures to minimize the dangers faced by United Nations and associated personnel acting as peace-keepers in troubled parts of the world. However, the legal framework within which United Nations peace-keeping forces operated was not always clear. In Somalia, Cambodia and the former Yugoslavia, assailants had been able to attack peace-keepers and aid workers with impunity, knowing that they could not be held legally accountable for their crimes. Accordingly, legal measures must form a part of the overall response to the problem. In that connection, the draft Convention which was before the Committee would send a message to the parties to a conflict that attacks on United Nations and associated personnel would meet with an appropriate response.

32. Safeguards had been built in to ensure fairness for all concerned. The provisions followed well-established international precedents and represented a compromise among various points of view. In view of the diversity of opinions expressed during the debate in the Ad Hoc Committee, that was the best that could be hoped for.

33. His country, despite its small size and limited resources, had participated in a number of peace-keeping operations by contributing military observers and police forces, and was always concerned about the safety of its personnel. The provisions contained in the draft Convention were not the only ones required to ensure safe and successful peace-keeping operations. It was also important for the United Nations and the host State to enter immediately into a status-of-forces agreement with a view to identifying, in accordance with international practice, their respective areas of criminal jurisdiction over military personnel assigned to United Nations peace-keeping operations.

34. Mr. Lamptey (Ghana) took the Chair.

35. Mr. MARTENS (Germany), speaking on behalf of the European Union and Austria, said that the draft Convention was a fair and balanced text which would contribute to better protection of United Nations and associated personnel. He noted with satisfaction that the principle of individual responsibility for

violation of the provisions of the draft Convention, which was of the utmost importance, had been accepted by all delegations.

36. Attacks on United Nations personnel were criminal acts. The draft Convention required all parties to establish jurisdiction over the crimes defined in article 9. Individual responsibility was further ensured by the incorporation of the principle "extradite or prosecute" which was already found in a number of widely accepted international treaties.

37. The protection of United Nations and associated personnel was further guaranteed by the obligation imposed on States to take practical measures, including mutual information, cooperation and assistance, to ensure the safety and security of such personnel.

38. The most difficult and controversial issue had been the scope of application of the draft Convention. The European Union and Austria welcomed the fact that the draft Convention covered not only United Nations but also associated personnel, including persons assigned by intergovernmental and non-governmental organizations to carry out activities in support of a United Nations operation.

39. The Working Group had also dealt with another crucial issue, namely, the relationship between the draft Convention and humanitarian law. It was important that the future convention should not undermine widely accepted principles of humanitarian law. Accordingly, the delegations on whose behalf he spoke noted with satisfaction that the Working Group had found a formula which drew a clear line between the application of the future convention and the law of international armed conflicts. The draft Convention did not apply to enforcement actions under Chapter VII of the Charter to which the law of international armed conflicts applied.

40. Due account had also been taken of the concern of States which had wished to see the consent of the host State included as a requirement. Draft article 20 reaffirmed that the future convention did not, in and of itself, authorize United Nations operations and thus could not replace the consent of the host State whenever that became necessary under international law.

41. The delegations on whose behalf he spoke urged the immediate and unanimous adoption of the draft Convention by the Committee and the General Assembly.

42. Mr. SEGER (Observer for Switzerland) said that the draft Convention was a success overall and deserved to be recommended for adoption by the General Assembly. His delegation was convinced that the future convention would be a useful and viable instrument. In particular, Switzerland noted with satisfaction that a clear solution had been found to the issue of the scope of application of the draft Convention and its relationship to international humanitarian law.

43. The sole criticism which could be made of the draft text related to its article 1 (c) (ii), which contained criteria for the application of its provisions to operations other than those for the purpose of maintaining or restoring international peace and security. That provision appeared to be problematical; for example, it was unclear how the Security Council's power to declare the draft Convention applicable to operations which did not fall within the specific framework of maintaining or restoring peace and security could be justified. On the other hand, if it was preferred that such operations should be dealt with by the General Assembly in application of the draft Convention, the question arose as to whether the Assembly was really structured in a way enabling it to take such a decision with the requisite speed. Only the test of practice would determine whether or not his delegation's initial fears were justified; in the meantime, it was to be hoped that consistent practice would be established. Despite those reservations, his Government was prepared to give favourable consideration to ratifying the draft Convention following its adoption by the General Assembly.

44. With regard to article 17 (Fair treatment), his Government wished to place on record its interpretation of the article, namely, that it did not confer on alleged offenders regarding whom investigations or proceedings were being carried out any additional rights beyond those already guaranteed in Swiss national legislation. Accordingly, his country would apply article 17 in accordance with its customary practices concerning investigations and proceedings which, moreover, were fully in keeping with the provisions of the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

ANNOUNCEMENT CONCERNING SPONSORSHIP OF DRAFT RESOLUTIONS

45. Ms. DAUCHY (Secretary of the Committee) said that the Bahamas had joined the sponsors of draft resolution A/C.6/49/L.6.

The meeting rose at 12.10 p.m.

UNITED NATIONS

General Assembly

FORTY-NINTH SESSION

Official Records

SIXTH COMMITTEE
30th meeting
held on
Wednesday, 9 November 1994
at 3 p.m.
New York

SUMMARY RECORD OF THE 30th MEETING

Chairman: Mr. LAMPTEY (Ghana)

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AGENDA ITEM 137: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION (continued)

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The meeting was called to order at 3.40 p.m.

AGENDA ITEM 141: QUESTION OF RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE (continued) (A/49/22; A/C.6/49/L.4)

1. Mr. OWADA (Japan) said that, given the proliferation of peace-keeping operations conducted in various areas of the world by the United Nations, the international community must create an environment in which United Nations and associated personnel could discharge their mandates in total safety. Japan had a long history of cooperation with United Nations peace-keeping operations, mainly through financial contributions, but it had recently enacted new legislation enabling it to contribute personnel. For example, it had sent troop contingents and military observers of its self-defence forces to join the United Nations Transitional Authority in Cambodia (UNTAC), thus contributing to the operation's success. At present a Japanese troop contingent and five officers were participating in the operation in Mozambique - ONUMOZ. Furthermore, some 400 Japanese personnel had been sent to Zaire to provide humanitarian assistance to refugees from Rwanda. Japan had also sent election observers to several other countries to help with their democratization efforts.

2. But Japan's enthusiasm for the role played by United Nations peace-keeping operations in the restoration of peace in various areas was tempered by the knowledge that as the operations had proliferated the number of casualties among their personnel had also increased. Particularly disturbing in that respect was the increasing incidence of deliberate and unprovoked attacks on United Nations personnel. Since 1948 more than a thousand United Nations peace-keepers had been killed in the line of duty, and more than a third of the casualties had occurred since the beginning of 1993. In addition, an even larger number of civilian personnel, most of them engaged in humanitarian work, had been targets of senseless and vicious attacks. There could be no doubt that, unless the problem was addressed seriously and the necessary measures were taken to ensure the security of United Nations peace-keepers, they would be unable to discharge their responsibilities effectively and might very well lose the support of the international community. New Zealand and Ukraine should thus be commended for their 1993 request to have the present item included in the agenda of the forty-ninth session. The negotiating text of a draft convention had now been produced, and Japan had participated actively in the work in the conviction that the convention would serve the interests of the whole international community. Nevertheless, although the revised text (A/C.6/49/L.4) was fairly balanced, several of its aspects needed further examination.

3. Firstly, with regard to the definitions contained in article 1 and the scope of application in article 2, Japan had consistently held the view that since the Convention included penal clauses it was essential for the definitions and the scope of application to be precise. The categories of operation and personnel covered by the convention must be clearly defined so that, in accordance with the relevant provisions of article 2, the convention could not be applied when the law of international armed conflict applied. While

article 2, paragraph 2, was useful in that it avoided the risk of concurrent application of the convention and the law of international armed conflict, it might be feared that in practice the paragraph would not be sufficient to avoid concurrent application. The draft texts should be examined with specific examples in mind, and consideration must be given to the types of personnel which should be covered, the types of operation which States would be expected to participate in, and the types of activity which would be conducted under the convention.

4. During the discussions in the Working Group Japan had stressed that all United Nations peace-keeping operations conducted in dangerous situations and all their personnel should be covered by the convention. In particular, inasmuch as personnel involved in humanitarian assistance operations very often worked in intrinsically dangerous situations and were vulnerable, they were in even greater need of protection than peace-keepers as such. According to the existing language of article 1, paragraph (c) (ii), in order for a United Nations-related humanitarian operation to be covered by the convention, the Security Council or the General Assembly must declare that there existed an exceptional risk to the safety of the personnel concerned. However, there was no guarantee that such a declaration would be made expeditiously and in time. By contrast, any operation whose purpose was the maintenance or restoration of international peace and security was automatically covered by the convention irrespective of the danger to which the participants were exposed. Japan strongly believed that, as a matter of principle, there should be no differentiation in treatment between peace-keeping and humanitarian operations. That view was shared by a number of delegations as well as by the humanitarian agencies concerned. Japan intended therefore to continue to urge that a way must be found of ensuring that the personnel in question, particularly humanitarian assistance personnel working in dangerous situations, should be specifically protected under the convention.

5. Secondly, the Japanese delegation interpreted article 5 of the draft convention, which provided that a transit State shall "facilitate the unimpeded transit" of United Nations and associated personnel, as referring to the requirement of cooperation by the transit State. In that sense it was to be hoped that the phrase "cooperate in facilitating the transit" would be used.

6. Thirdly, Japan had consistently stressed that the convention must be effective and easy to apply. United Nations personnel often operated in areas where the local authorities were not fully in control and were not able to take the necessary safety measures as called for in the convention. For that reason the Japanese delegation attached great importance to article 7, paragraph 3, which required States parties to cooperate with the United Nations and other States parties in the implementation of the convention. If a State party was unable to bring to justice those responsible for an attack on United Nations personnel or to ensure the safety of such personnel, it could seek the cooperation of the peace-keeping operation in the area. Japan hoped that the paragraph would facilitate the satisfactory implementation of the convention.

7. Fourthly, article 9, paragraph 1 (e), included among the crimes covered by the convention "an act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack". The provision clearly could not be intended to extend to an accomplice in organizing or ordering an attack in cases where the principal offender stopped short even of an attempt to commit an attack as stipulated in paragraph 1 (d). Moreover, there was no provision in the Japanese Criminal Code which referred specifically to "organizing or ordering" as a punishable crime. Depending on how those terms were defined, Japan might have to enact new legislation to bring its current legislation into line with the convention. It would be better to leave such details of implementation of the convention to the discretion of the States parties, which could find the best way of dealing with the situation in the context of their own national criminal law.

8. With regard to article 10, the Japanese delegation believed that in the interest of effective implementation of the convention the States parties should be able to establish their own jurisdiction not only when a crime was committed in their territory or when the alleged offender was one of their nationals but also in the cases covered by paragraphs 2 and 4. Japan supported in principle the establishment of universal jurisdiction. However, in the cases covered by paragraph 4 a serious legal problem could arise in that the obligation of a State to establish its jurisdiction under paragraph 4 would be made dependent on the sovereign will of another State acting under paragraph 2. Since all the States parties involved could choose to establish their jurisdiction but were not required to do so, the constitutional requirement for a State to maintain the utmost clarity in matters pertaining to the application of criminal law could be put in jeopardy if the State in question was required, under paragraph 4, to establish its jurisdiction on such an ambiguous basis as paragraph 2.

9. Subject to those comments, Japan was ready to join other States in producing the final text of a draft convention, which should be adopted as soon as possible.

10. Mr. STANCZYK (Poland) said that Poland had participated actively in United Nations peace-keeping and other operations by providing both military personnel and civilian specialists and experts. Poland had always seen that participation as its duty to the international community and its contribution to fulfilling the main purpose of the United Nations, which was to maintain international peace and security. At the same time, as an active participant in the activities in question, Poland was extremely concerned at the growing number of violent attacks on United Nations and associated personnel. More and more often, such attacks resulted in death or serious injury, and his Government was deeply concerned at their increase. It strongly condemned that heinous form of international terrorism and recognized the need for concerted action to enhance the safety and security of United Nations and associated personnel.

11. For that reason, his country had welcomed the establishment of the Ad Hoc Committee on the Elaboration of an International Convention Dealing with the

Safety and Security of United Nations and Associated Personnel and had participated actively in its work. For that reason, too, it had presented a proposal concerning the future convention's first two articles, dealing with its scope of application and definitions. Those matters were, in fact, of crucial importance. His country was pleased at the results obtained by the Ad Hoc Committee. The revised negotiating text developed by the Committee provided a good basis for further work within the Working Group and for elaborating the final text of the draft convention (A/C.6/49/L.4) under consideration by the Sixth Committee.

12. The future convention should have the widest possible scope of application. Poland supported the broad definitions given for such terms as "United Nations personnel" and "associated personnel", and, in particular, was pleased to note that the latter term also included persons deployed by an intergovernmental organization or a humanitarian non-governmental organization. Furthermore, although the term "United Nations operation" had been broadly defined, the Working Group had been very careful to distinguish between that term as used in the draft and a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter. The provisions in articles 1 and 2 of the draft convention should ensure its effective implementation and the fulfilment of its function of protecting United Nations and associated personnel.

13. Furthermore, his country found the draft provisions concerning jurisdiction, prosecution and extradition to be fully acceptable, as they were in keeping with the provisions of previously concluded anti-terrorist conventions that were now well established in the practice of States.

14. Given the urgency of adopting the convention and the need to maintain momentum, his country fully supported the Working Group's recommendation that the Sixth Committee should consider the text of the draft convention "with a view to its adoption". His delegation hoped that the Committee and the plenary Assembly would accept that recommendation.

15. Mr. XU Guangjian (China), while praising the Working Group and, in particular, the work of its Chairman, said that his delegation still had some reservations about the draft convention that it had adopted.

16. In recent years, with the expansion of United Nations peace-keeping operations, the number of casualties among the personnel of those operations had aroused increasing concern in various countries, including his own, which was ready to seek practical and effective means of protecting such personnel. His Government had endorsed the elaboration of a convention on the question as early as 1993, and had participated actively and conscientiously in the drafting process.

17. His delegation believed that the drafting of the proposed convention could not be divorced from the actual experience of peace-keeping operations in recent years. Everyone agreed that the drastically increased number of United Nations peace-keeping operations had been useful in preventing conflicts and promoting

the settlement of disputes; however, frustrations abounded. Since 1993, peace-keeping operations had been experiencing very difficult conditions attributable to many complex and sensitive elements, which had led to universal concern within the international community. Faced with those changes in the peace-keeping operations, his delegation had repeatedly asserted that, in elaborating the proposed convention, consideration should be given to all relevant elements. The purpose of such a convention was to provide effective and efficient protection to United Nations peace-keeping personnel. For that reason, the universality of the convention merited careful attention, since the convention should reflect the practice of various countries and be acceptable to them.

18. Accordingly, his delegation had always maintained that the scope of application of the convention should be strictly and clearly defined, and it could not agree to the inappropriate expansion of that scope. In the view of his country, peace-keeping operations should essentially mean operations aimed at maintaining international peace and security. The consent and cooperation of the State or the parties concerned should be ensured. The operations should be under the command and control of the United Nations. Yet the current draft (A/C.6/49/L.4) did not meet those requirements.

19. His delegation believed that the scope of the convention should be limited to operations authorized by the Security Council and agreed upon by the State concerned. The tendency in recent years for peace-keeping operations to become involved in the internal affairs of States had aroused concern among many countries. The convention should therefore reiterate the purposes and principles of the Charter of the United Nations and should reaffirm the principles of State sovereignty and non-interference in the internal affairs of States. That point should be fully reflected in the draft convention.

20. As an alternative, his delegation had also suggested that the scope of the convention might be limited to "peace-keeping operations under the command and control of the United Nations". Those were in fact the only operations that could objectively and fairly fulfil their mandates in the interest of the United Nations and the international community. In his report to the Security Council in March 1994 entitled "Improving the capacity of the United Nations for peace-keeping", the Secretary-General had pointed out that peace-keeping operations under the command and control of the United Nations would "carry out the mandate entrusted to them by the Security Council objectively and fairly, representing the political will of the international community as a whole rather than any partial interest". Therefore, he had continued, "the members of a peace-keeping operation must be under the exclusive operational command of the United Nations and must accept no orders from any outside agency in respect of their United Nations duties". However, the phrase in article 1, subparagraph (c), of the current draft, "under United Nations authority and control", was not the same as "under the command and control of the United Nations", which was why his delegation had reservations there as well.

21. For the States parties to fulfil their obligations under the convention effectively, the United Nations and associated personnel protected by the convention must be defined clearly. The definitions in article 1,

subparagraph (b) (ii) and (iii), were imprecise and a bit too broad, which meant that it would be difficult in practice for the host country to provide effective protection. For that reason, his country reserved its position on those provisions.

22. Apparently, the existing draft was not satisfactory to all. As to whether it should be adopted at the current session of the General Assembly, his delegation thought that it would be appropriate to wait until delegations' comments had been heard before taking a decision.

23. Mr. ROSENSTOCK (United States of America) said that the draft convention dealing with the safety and security of United Nations and associated personnel was an important text that filled a gap in international law. That a convention of such significance could have been negotiated in less than a year was a testament to the importance that Member States attached to the initiative.

24. The proposed convention provided for situations not covered by the laws of war. It was appropriate that its scope of application included non-combat peace-keeping operations and operations for purposes other than maintaining peace where the Security Council or General Assembly had declared that there was an exceptional risk for the safety of the personnel.

25. The subject in question was complex and many difficult questions had been raised during the negotiations. No delegation had got all it had wanted. From his delegation's point of view, the text could still be improved. None the less, given the pressing need to provide protection to United Nations and associated personnel, it would not be reasonable to wait until a "perfect" solution had been found to adopt the document. Further negotiation would not, in the view of his delegation, lead to better results, and it therefore urged the Committee to recommend that the plenary Assembly should adopt the draft and open the convention for signature.

26. Mr. PERERA (Sri Lanka) said that the Organization had invested unprecedented political, financial and human capital in peace-keeping operations which were becoming increasingly complex, dangerous and expensive. That was why it was necessary to devise a new instrument to supplement the measures of protection for United Nations and associated personnel already provided by existing conventions.

27. The draft convention dealing with the safety and security of United Nations and associated personnel (A/C.6/49/L.4) followed the "extradite or prosecute" regime which formed the basis of existing international conventions dealing with terrorism. Draft articles 13 to 15 required a State party in whose territory an alleged offender was present either to extradite that offender or to submit the case to its competent authorities for the purpose of prosecution. Draft article 10 - on the establishment of jurisdiction by States parties where the crime was committed in their territory, or where the offender had their nationality, and on the discretionary exercise of such jurisdiction on the basis of the nationality of the victim or where the crime was directed against the State party itself - was consistent with established principles of criminal

jurisprudence. The mandatory requirement of establishing jurisdiction where an alleged offender was present in the territory of a State party without having any other link with the crime was also essential to ensure that the alleged offender did not enjoy a safe haven after committing a crime in a third country. Those provisions were consistent with legal obligations under existing instruments and provided a sound legal basis for protecting United Nations personnel.

28. His delegation also noted that, under draft article 2, the convention did not apply to United Nations operations authorized by the Security Council as an enforcement action under Chapter VII of the Charter; in that context, personnel were engaged as combatants against organized armed forces and the law of international armed conflicts applied. That would avoid the creation of a dual regime in respect of enforcement operations undertaken by the United Nations. Draft articles 6 to 8, dealing with the rights and obligations of United Nations personnel and of host States, were, by and large, consistent with existing instruments such as the Convention on the Privileges and Immunities of the United Nations and the status-of-forces agreements.

29. Draft article 1 encompassed the most complex set of issues raised by the text under consideration. His delegation wished to place on record its understanding on those issues. The consent of the host State was an essential element in a decision to undertake any United Nations operation. That element had found expression in the preamble to the draft text. However, the question of consent was one that had to be addressed at the time of mandating a specific operation. His delegation therefore expected that the competent United Nations organs concerned would take into account the important element of the consent of the host State before mandating a United Nations operation of the type envisaged under the proposed convention. His delegation further noted that article 20, subparagraph (b), preserved the rights and obligations of States, in conformity with the Charter, regarding consent to the entry of persons into their territories.

30. The definition of the term "United Nations personnel" in draft article 1, subparagraph (a), covered specific categories of persons who could be identified in the context of existing definitions such as those in the Convention on the Privileges and Immunities of the United Nations. However, the definition of the term "associated personnel" in draft article 1, subparagraph (b), gave rise to an element of uncertainty. It raised the problem of the degree of responsibility and accountability to the United Nations of persons deployed by non-governmental organizations. Although that deployment was to take place under an agreement with the Secretary-General, the degree of actual authority and control exercised by the United Nations over such personnel was a matter of crucial importance. By attempting to cover persons who did not come under the direct authority and control of the Secretary-General, the scope of the convention might be widened to such an extent as to give rise to difficulties in its implementation.

31. On the definition of the term "United Nations operation" in draft article 1, subparagraph (c), his delegation hoped that it would cover only

operations conducted under United Nations command and control. It noted that the existing text of that definition included the words "United Nations authority and control" and was an improvement on the earlier text. His delegation remained concerned, however, at the disturbing practice of bypassing the command and control and the political direction of the United Nations in certain peace-keeping operations, which had led to the blurring of the distinction between United Nations peace-keeping efforts and other military operations. His delegation's understanding of the current formulation of that draft article was that only operations which were fully accountable to the United Nations and conducted under its political direction and control would be covered by the proposed convention. While recognizing that the revised negotiating text represented a delicate compromise, his delegation was ready to join a consensus to commend the draft for consideration by Member States.

32. Mrs. TSONEVA (Bulgaria) said that her country attached considerable importance to the elaboration of a draft convention on the safety of United Nations and associated personnel, which should be well balanced and comprise all elements of the right of protection in compliance with the universally recognized principles and norms of criminal law. Her delegation considered that the scope of the draft convention being considered by the Sixth Committee should be very broad and that it should provide protection to all personnel engaged in United Nations operations or conducting activities directly related to the mandate of such operations. There should be no gradation of the risk to which personnel were exposed during such operations. The personnel of humanitarian organizations were entitled to the same degree of protection and safety as United Nations personnel.

33. With respect to the types of operation to which the convention would apply, her delegation considered that the proposed text rightly focused on peace-keeping operations, while operations conducted in pursuance of Chapter VII of the Charter should continue to be regulated by the principles and norms of international humanitarian law. The precise identification of the organs determining the mandate of the operations included in the scope of the convention was a proper approach which would contribute to the clarity of the text and eliminate the risk of future disputes regarding that issue. The inclusion of the term "exceptional risk" as an element determining the type of operations to which the convention should apply would lead to a certain restriction of the right of protection and to potential difficulties due to the lack of precise criteria defining the term. In a spirit of compromise, her delegation was, however, willing to accept the text in its current form.

34. Her delegation considered that it was in line with the objectives of the convention that each State contributing personnel to a United Nations operation should have the right to withdraw such personnel under certain conditions. The entitlement to appropriate compensation was an essential part of the right of protection under any criminal law system, and a solution could be found to that problem.

35. The provisions of the draft convention regarding the right of self-defence, designed to provide maximum safety to United Nations personnel, were well

balanced. They should be interpreted in the context of the convention in order to avoid any ambiguity and the risk of possible disputes in the future.

36. The prosecution of persons alleged to have committed attacks against United Nations personnel was equally important. The imposition of a just punishment acted as a deterrent with regard to nationals of the host State. The convention provided for prosecutions to be brought consistently by stipulating the duty of active participation on the part of host States. The way in which issues connected with the prosecution of alleged offenders were settled under draft article 10, concerning extradition and legal assistance provided by States parties, was satisfactory.

37. Bulgaria understood the positions of the different States on various contentious issues in the convention. The guiding principle should be the urgent need for the elaboration of an international legal instrument providing the best possible protection to personnel contributed by States for United Nations operations. Her delegation called upon all States to spare no effort to ensure the endorsement and adoption of the draft convention by the Sixth Committee, and subsequently by the General Assembly, so that it would be opened for signature during the Assembly's forty-ninth session.

38. Ms. ARIFFIN (Malaysia) said that her country, which contributed troops to a number of United Nations peace-keeping operations, shared the concern of many States at the number of deaths and casualties among those involved in peace-keeping activities. The statistics were alarming: in 1993 201 peace-keeping personnel had been killed, and in 1994, 126 personnel had already been killed up to the end of October. It was therefore her delegation's hope that the adoption of a convention on the safety of United Nations and associated personnel would help to put an end to that unacceptable state of affairs. At the very least even at the current stage the draft convention sent a signal that the international community would not tolerate acts of violence deliberately targeted at United Nations and associated personnel.

39. Her delegation concurred with the New Zealand delegation that the convention should cover those persons most in need of protection. Accordingly she welcomed the extension of the protection provided by the convention to persons who, while not belonging to the United Nations, were closely associated with peace-keeping operations.

40. Notwithstanding the shortcomings noted by some delegations, her delegation was satisfied with the draft convention. What was important - indeed what was the fundamental objective of the convention - was to improve the safety of those who were involved in United Nations peace-keeping operations under increasingly difficult and hazardous conditions. That was precisely the intention of the draft convention, which made it the duty of States parties to enact laws to establish jurisdiction over persons who committed the crimes enumerated in draft article 9. Equally important, in order to ensure that the alleged offenders did not escape justice, it imposed an obligation on States parties either to try such offenders or to extradite them. Her delegation was happy to note that

great care had been taken in the draft convention to safeguard the rights of all parties.

41. In the knowledge that a legal instrument was not the sole answer to the problem, her delegation called for political and other measures to be considered in other bodies of the United Nations. She trusted that the Sixth Committee and the General Assembly would adopt the draft convention at the current session.

42. Mr. Young Won KIM (Republic of Korea) welcomed the broadening of the scope of the convention to the personnel of humanitarian non-governmental organizations. In view of the ever-expanding role of NGOs in United Nations activities, particularly in the field of humanitarian assistance, the amendments to articles 1 and 2 of the draft were fully justified and would be extremely useful in broadening the base of NGO participation in United Nations operations.

43. With regard to the definition of a United Nations organization, his delegation was among those that preferred that operations should not be strictly limited to those authorized by the Security Council. Accordingly he welcomed the changes to the wording of article 1 (c).

44. Similarly, the wording of article 9, which defined crimes against United Nations and associated personnel, was fully satisfactory to his delegation.

45. The provisions on extradition and mutual legal assistance were basically in line with those of other international instruments. They were an integral part of securing effective implementation of the convention.

46. Lastly, his delegation wished to convey its concern at the alarming number of casualties among United Nations and associated personnel. It was of supreme importance to provide the safest possible conditions for those courageous men and women, failing which the costs of humanitarian and peace-keeping operations might ultimately become too high in terms of human lives. Accordingly his delegation sincerely hoped to see the convention adopted in the near future and trusted that the international community would do its utmost to effect its early entry into force.

47. Mr. ORDZHONIKIDZE (Russian Federation) said that the contribution made by Russia to the formulation of the draft convention on the safety of United Nations and associated personnel indicated its great interest in the speedy establishment of reliable guarantees for the protection of those involved in United Nations operations. The draft convention was a unified mechanism, encompassing a series of closely interwoven links. Some elements had already been employed in other areas of international cooperation: for example, questions relating to proceedings against individuals suspected of having committed crimes against various categories of personnel involved in United Nations operations. The main point was to ensure certain punishment on the basis of the principle of universal criminal jurisdiction. The draft convention also had innovative aspects. Thus, the concept of United Nations operations - in particular for the purpose of maintaining or restoring international peace and security - was set forth for the first time in a convention, as were the

categories of staff involved in such operations. There was a dividing line between the scope of the convention and what was commonly termed the laws of war. Further, in the specific area of peacemaking, the draft reflected a successful and appropriate attempt to establish the bases of contemporary humanitarian law permitting civilized behaviour even in situations of armed conflict.

48. The accomplishment was considerable. Nevertheless, the draft represented only an early step towards the establishment of universal bases of international law relating to peacemaking. The document reflected the highly divergent manner in which States viewed the problem. It was undoubtedly the product of its time, the result of compromise by various groups of States. The future would reveal its positive aspects as well as its shortcomings. But the text set out approaches that were common to all States and opened the way to further legal instruments in that area. The future convention might well become a model for the protection of personnel involved in peace-keeping operations conducted under the authority of regional organizations.

49. The convention had a further aim, that of translating into domestic law internationally recognized criteria on the protection of peace-keeping personnel, thus establishing conditions for the harmonization and unification of national approaches. The largest possible number of States should now be encouraged to accede to the convention. That would make it possible to begin its implementation and underpin United Nations operations with firm legal guarantees, the scope of which would continue to expand. It was to be hoped that its entry into force would give a serious warning to those responsible for attacks on United Nations peace-keeping personnel and those who hindered peace-keeping and peacemaking.

AGENDA ITEM 137: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION (continued) (A/C.6/49/L.5 and L.6)

50. The CHAIRMAN said that the Republic of Moldova had joined the sponsors of draft resolution A/C.6/49/L.5, and that Ireland, Panama and Spain had joined the sponsors of draft resolution A/C.6/49/L.6.

The meeting rose at 4.50 p.m.

UNITED NATIONS

General Assembly

FORTY-NINTH SESSION

Official Records

SIXTH COMMITTEE
31st meeting
held on
Thursday, 10 November 1994
at 3 p.m.
New York

SUMMARY RECORD OF THE 31st MEETING

Chairman: Mr. MADEJ (Poland)
(Vice-Chairman)

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AGENDA ITEM 137: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION (continued)

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In the absence of the Chairman, Mr. Madej (Poland), Vice-Chairman, took the Chair.

The meeting was called to order at 3.25 p.m.

AGENDA ITEM 141: QUESTION OF RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE (continued) (A/49/22, A/C.6/49/L.4 and L.9)

1. Ms. LADGHAM (Tunisia) said that the increase in the number of acts of violence committed against personnel involved in United Nations peace-keeping operations showed the urgent need to take measures to strengthen their protection. Tunisia, which provided troops for several peace-keeping operations, had been among the first countries to express its support for the elaboration of an international instrument on the question. Accordingly, it did not wish to call into question the adoption of the text under consideration; its sole concern was to secure the widest possible adherence to the future convention, for, without that, the intended objective could not be achieved. Yet statements by previous speakers seemed to suggest that there were still differences of opinion regarding the substance, which might delay, or even altogether prevent, accession to the Convention by a number of countries.

2. Articles 1 and 2 of the draft convention were certainly those that had given rise to the most heated debates between advocates of a restrictive scope of application and those who favoured a broad application of the convention. As formulated, the convention would apply to all peace-keeping or peace-making operations, with the exception of those covered by Chapter VII of the Charter. It would also apply to other United Nations operations which had been declared by the General Assembly or the Security Council to entail an exceptional risk to the security of personnel. Regarding that latter point, her delegation wished to express its doubts as to the viability of the proposed mechanism.

3. Her delegation would also have preferred to see the reference to the consent of the host State, as a guarantee of the effectiveness of the operation and the safety of its personnel, in the main body of the text rather than in the preamble.

4. Some of the draft articles, in particular the definition of the personnel to whom the convention applied, still contained imperfections which might give rise to divergent readings when it came to application. Furthermore, the draft articles should have specified what organ or organs were empowered to authorize operations.

5. Compensation of personnel assigned to United Nations peace-keeping operations was a question of particular concern to Tunisia. The practice currently applied in the United Nations, whereby personnel were compensated on the basis of the scale applied in the country of origin, seemed neither satisfactory nor fair. Personnel serving the international community in the cause of peace should be entitled to just and equal treatment.

6. That question had also been the subject of consideration by the Special Committee on Peace-keeping Operations and, in its resolution 48/42, the General Assembly had requested the Secretary-General to review the compensation mechanisms with a view to developing equitable and appropriate arrangements, and to ensure expeditious reimbursement. The compromise reached by the Working Group, namely, the insertion in the saving clauses of a reference to an entitlement to appropriate compensation, did not completely satisfy her delegation, which would have preferred a bolder formulation. The fact that it was in a saving clause might cause some to believe that the entitlement in question was already applied in practice and that it was simply a question of preserving it. That concern, which was widely shared, would no doubt soon meet with a favourable response.

7. Mr. YOUSIF (Sudan), while recognizing the utility and value of the draft convention with regard to both the effectiveness of peace-keeping operations and the protection of personnel, said that his country had some reservations regarding the scope of application of the future convention. It had already objected to the inclusion of personnel of non-governmental organizations in the scope of application of the convention. In that regard, the Sudan had had occasion to note that some non-governmental organizations did not respect the laws of the countries in which they operated. There had been cases in which non-governmental organizations had been involved in activities likely to be detrimental to the security of the host countries, which had no means of controlling their acts. Consequently, in his delegation's view, inclusion of the personnel of non-governmental organizations in the definition of associated personnel raised problems which might have been avoided if the Working Group had taken account of the proposals made by certain delegations.

8. The draft convention should provide for a mechanism that would make the presence of individuals or of non-governmental organizations in a transit or host State conditional on the consent of the State concerned. As States Members of the Organization were required under Article 25 of the Charter to accept and carry out the decisions of the Security Council, the draft text should specify the criteria governing the prior consent of the host or transit State with regard to associated personnel, so as to reconcile, particularly in articles 1 and 6, the need to ensure the safety of peace-keeping personnel with the principle, set forth in the Charter, of respect for the political sovereignty of States.

9. As currently formulated, article 9 was likely to pose massive legal problems, since it required every State party to make all the acts listed therein crimes under its national law. Yet the acts referred to were not necessarily offences under the legislation of the States concerned. Not only did that requirement conflict with the principle of equality of all before the law, but it was also likely to delay the convention's entry into force, since those States would have to adapt their legislation to the provisions of article 9 before they were able to accede to it.

10. Believing that the current practice, whereby personnel were compensated on the basis of the scale applied in the country of origin, was unfair, his

delegation joined those delegations that had requested that one article should be specifically devoted to the question of compensation of personnel.

11. In conclusion, he said that his criticisms in no way diminished the importance his country attached to the future convention, and that if it was adopted, his delegation would not decline to join the general consensus.

12. Mr. PIBULSONGGRAM (Thailand) said that his country, which contributed troops to peace-keeping operations, was particularly concerned at the increasing insecurity faced by personnel involved in those operations. The international community had a duty to protect those courageous men and women; and also to ensure that the perpetrators of attacks and acts of aggression were brought to justice. A convention dealing with the safety of United Nations and associated personnel would fill a gap in international law and would serve to prove that the international community would not allow those who committed crimes against humanitarian and peace-keeping personnel to go unpunished.

13. While it did not entirely satisfy all delegations, the draft convention constituted a valuable contribution to the progressive development of international law. Debate on its provisions could continue for years to come; but in the meantime, United Nations and associated personnel would continue to be exposed to serious dangers. For that reason, his delegation favoured adoption of the draft convention in its current form.

14. Nevertheless, he pointed out that a legal instrument alone was not enough to ensure the safety of the personnel involved, and that it would be necessary to employ other means of persuasion, including preventive diplomacy.

15. Ms. CARYANIDES (Australia) said that the draft convention was a significant step forward in creating a legal framework for deterring attacks against United Nations and associated personnel, which would improve not only the safety of such personnel, but also the general effectiveness of United Nations operations. By requiring that each State party make an attack upon any United Nations or associated personnel a crime under its national law, the convention would create personal responsibility for individuals instigating the violence. It would also commit States parties to prosecute or extradite the alleged perpetrators of the attacks.

16. She did not share the view of some delegations that the convention had been drafted precipitously. Many of its provisions were not innovations: the mechanisms for the establishment of jurisdiction and the measures governing prosecution or extradition, for example, had already found expression in several international instruments. On the contrary, the draft convention harmoniously reconciled the rights and obligations of all concerned, in full compliance with the provisions of the Charter. It was thus capable of serving the interests of the international community as a whole.

17. The scope of application of the future convention was the issue that had created the greatest number of difficulties throughout the negotiations. Her delegation welcomed the fact that the definitions contained in articles 1 and 2

made it possible to cover the whole range of operations that the Security Council and the General Assembly had authorized in recent years. The definition of "associated personnel" was sufficiently broad to cover a very wide range of personnel, thereby according protection to the personnel of non-governmental organizations, who shouldered much of the burden of international humanitarian relief.

18. By stating that offenders would be held internationally and individually accountable for their actions even when the offences in question were perpetrated in areas outside the jurisdiction of a host State or where the Government concerned was unable to exercise its authority, the draft made it quite clear that the international community would not allow such offences to go unpunished. It was therefore important not to limit the scope of the convention to operations conducted under Chapter VI of the Charter; the Australian delegation expected that the Security Council or the General Assembly would make the prior declarations provided for in article 1, paragraph (c) (ii), of the draft.

19. She hoped that the draft convention would be adopted by the General Assembly at the current session.

20. Mr. AL-BADR (Qatar) said that 126 persons, including 39 staff members of organizations of the United Nations system, had died in peace-keeping operations in 1994, mainly in Rwanda, Somalia and Bosnia and Herzegovina. His delegation therefore supported the draft convention under discussion and hoped that the General Assembly would adopted it as soon as possible.

21. With regard to the definitions in article 1, however, he wondered whether paragraph (b) (iii) concerning persons deployed by a humanitarian non-governmental organization or agency might not be restrictive; for he was not sure whether the definition applied to persons whose activities were closely linked to the Organization's missions or operations even though they themselves were not working for the United Nations. He was referring specifically to journalists (correspondents, photographers and others), who worked for private companies but none the less carried out a humanitarian mission by reporting on the activities of United Nations staff and helping to mobilize international public opinion in support of the operations conducted by the United Nations and non-governmental organizations. That category of personnel should also be eligible for the protection afforded under the convention.

22. Although his delegation did not wish to amend the definitions contained in the draft, it hoped that some wording would be found that would afford protection to representatives of the international press and ensure that those responsible for attacks on them were brought to justice.

23. Mr. BAIRAGI (Nepal) noted with deep concern that a large number of Nepalese peace-keepers had been killed or injured while carrying out their duties under the United Nations flag. Nepal nevertheless continued to contribute troops to the Organization and was very proud to do so. However, the international

community had a duty to guarantee the security and safety of the personnel involved in such operations.

24. His delegation welcomed the draft convention on the safety of United Nations and associated personnel. It wished to stress, however, that the text would have come much closer to perfection if certain core issues, such as the "consent of the host State", had been addressed with sufficient clarity in line with the established norms of international law.

25. The provisions of the proposed text concerning criminal law amply demonstrated that the international community was determined to prosecute or extradite and to punish the perpetrations of attacks on United Nations and associated personnel. That part of the draft was largely based on legal precedent. It could be viewed as a compendium of previously established rules. The primary responsibility for ensuring the safety of the personnel taking part in United Nations operations lay with the host Governments and the parties concerned. It was equally important to ensure the impartiality and international character of operations. His delegation noted with satisfaction that those principles were duly reflected in the draft.

26. It was also pleased to note that the text recognized the important role played by the General Assembly - the only representative body of the United Nations - in determining the existence of an exceptional situation that jeopardized the safety of the personnel participating in the operations. It was a welcome indication of the increasing contribution of the General Assembly to peace-keeping activities.

27. Among the other issues duly addressed in the draft text, perhaps the most important was the right of a Member State to withdraw its voluntarily contributed troops. His delegation felt, however, that application of the provision in question should not serve as a pretext for weakening the strength of troops participating in a troubled operation.

28. Lastly, respect for the right of self-defence as an inalienable and fundamental right and recognition of the applicability of international humanitarian law and universally accepted standards of human rights were vital issues that had been properly addressed in the draft convention.

29. Mrs. KUPCHYNA (Belarus) said that the legal provisions currently in force concerning the protection of the staff of peace-keeping operations were definitely inadequate and that the draft international convention under discussion would remedy major shortcomings in international law and enhance the effectiveness of United Nations activities in the area of international peace and security. Although some provisions fell somewhat short of its expectations, the delegation of Belarus was perfectly satisfied with the draft, which it viewed as a balanced compromise text that took due account of the occasionally conflicting interests of States.

30. For the time being, the Republic of Belarus was making only a modest contribution to United Nations peace-keeping activities but the question of the

participation of Belarusian troops in such operations was being actively addressed by the competent authorities. The adoption of an international convention on the safety of personnel could swing the balance in favour of a rapid affirmative decision. Accordingly, her delegation was in favour of the draft being adopted - and the convention being opened for signature - at the current session of the General Assembly. That would lay the foundation stone of a universal structure of protection for United Nations and associated personnel.

31. Mrs. RAMIRO-LOPEZ (Philippines) fervently hoped that the adoption of the convention on the safety of United Nations and associated personnel would serve as a warning to those who sought to challenge the firm resolve of the United Nations to fulfil the mandates of the international community. She also hoped that the Organization would show the same resolve in enforcing the text. The unjustifiable and criminal acts perpetrated against United Nations and associated personnel could only be deterred by swift action and the certainty of punishment.

32. Her delegation would have preferred the draft convention to extend its system of protection and redress of grievances to United Nations personnel engaged in humanitarian operations and other entities acting on their behalf. Such operations involved the same degree of risk as peace-keeping operations and were equally important. Her delegation regretted the lack of consensus on that score and hoped that the lacuna would be remedied as soon as possible by a new and more comprehensive instrument.

33. Her delegation supported the draft convention, not only because it would provide protection for Filipino nationals participating in peace-keeping operations, but also because it required the host State to exercise extraordinary vigilance in the prevention of acts of violence against United Nations and associated personnel and to ensure a speedy redress of grievance upon the occurrence of acts of violence. It was not lost on her delegation that, in the current state of events, developing countries would bear the brunt of that burden. The support of the developing countries for conventions of that type could therefore be seen as an affirmation of the growing maturity of their legal and administrative systems: none of them would shrink from that responsibility, which validated the gains made by their respective Governments.

34. Mr. OBEIDAT (Jordan) said that the unacceptable attacks against United Nations personnel were more than just attacks on the person of the victims and were directed at the activities and very legitimacy of the Organization. The speed with which a draft convention had been elaborated in that field showed how concerned Member States were about the safety of United Nations and associated personnel and about the need to fill the legal void that rendered difficult the protection of such personnel, which, in reality, was tantamount to protecting international peace and the humanitarian activities of the international community.

35. The Jordanian delegation welcomed the results of the negotiations on the draft convention, particularly the inclusion in article 1 of the words "agreement of the competent organ of the United Nations" [(b) (i)], and "under

United Nations authority and control" [(c)]. It also attached great importance to the inclusion in the text of certain guarantees which it considered essential and which were embodied in the words "with the consent and cooperation of the host State" (seventh preambular paragraph) and "consistent with the Charter of the United Nations" (art. 20). Lastly, the Jordanian delegation welcomed the establishment of a link between the scope of the draft Convention and the scope of international humanitarian law and of the laws of war, thereby again averting a legal vacuum and the consequent absence of protection.

36. The Jordanian delegation had become a sponsor of the draft resolution on the convention, which, because it was based on the principle "try or extradite" and used the wording found in many existing international conventions, could not but be consistent with the international legal order and receive the support of the vast majority of States.

37. Mr. ENAYAT (Islamic Republic of Iran), summarizing the position of his delegation, said that the scope of the draft convention, which had only recently been defined, should be more precise and more clearly delimited. Moreover, the consent of the host State should be a prerequisite for any United Nations operation. With regard to subparagraph (c) (ii) of article 1, he wondered why it had been decided to grant the Security Council or the General Assembly the power to enforce the provisions of the convention even though it was not within their competence to do so.

38. The Iranian delegation was of the view that the definition of "associated personnel" given in the draft text was very vague and general and therefore should not be included in the scope of application of the convention.

39. Lastly, he wished to emphasize that all peace-keeping operations were launched from the territory of the host State. Accordingly, no consideration should be given to the transit State (art. 5) for the purposes of the draft Convention. Moreover, such a question was of no relevance to the security of personnel and therefore had no place in the draft text. In conclusion, his delegation stood ready to cooperate in improving the text of the draft convention.

40. Mr. SEVAN (Assistant Secretary-General for Conference and Support Services, and United Nations Security Coordinator), speaking on behalf of the Secretary-General, and that the issue of the security of United Nations staff members was of paramount importance to the Secretary-General, to the executive heads of organizations and to the staff as a whole. It was for that reason that the Administrative Committee on Coordination had strongly supported the General Assembly's initiative to conclude a draft Convention on the Safety of United Nations and Associated Personnel.

41. Such personnel were carrying out activities mandated not only by the Security Council or the General Assembly, but also by the Economic and Social Council and by the governing bodies of United Nations programmes, funds and specialized agencies. All those functions constituted an integral part of the overall objectives of the Organization. The work of such individuals was no

less important and was often no less dangerous than the work carried out by those involved in peace-keeping operations.

42. Under the Convention on the Privileges and Immunities of the United Nations, the host Government had the primary responsibility for the safety and security of United Nations staff. As things currently stood, there was no international protection available to United Nations personnel. The Convention on the Privileges and Immunities of the United Nations provided exemption from legal process only with respect to acts carried out in the course of performance of official functions. It did not provide for the prosecution of those who committed crimes against United Nations and associated personnel. Since 1992, however, 88 United Nations staff members had lost their lives (including 39 in Rwanda). Of the 42 victims who had been shot to death, not a single case had been resolved.

43. The Administrative Committee on Coordination had taken the position that all United Nations staff members serving with the organizations of the United Nations system should be afforded the same degree of protection. The draft convention under consideration therefore represented a crucial first step towards enhancing the safety of United Nations staff. It was incumbent on all Member States to consider urgently further measures to provide equal security for all United Nations and associated personnel.

44. Mr. XU Guangjian (China) said that the Chinese language version of the draft convention contained a number of errors. His delegation had a corrected version which it could make available to the Secretariat.

45. Mr. KIRSCH (Chairman of the Ad Hoc Committee and of the Working Group on the Elaboration of an International Convention dealing with the Safety and Security of United Nations and Associated Personnel) thanked delegations for the kind words which they had addressed to him and the constructive comments which they had made on the draft Convention, which he hoped could be adopted at an early date.

46. The CHAIRMAN announced that El Salvador, Guatemala, Jordan, Kyrgyzstan, Samoa and the United States of America had joined the sponsors of draft resolution A/C.6/49/L.9.

AGENDA ITEM 137: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION (continued)

47. The CHAIRMAN announced that Portugal had joined the sponsors of draft resolution A/C.6/49/L.6.

The meeting rose at 3.25 p.m.

UNITED NATIONS

General Assembly

FORTY-NINTH SESSION

Official Records

SIXTH COMMITTEE
32nd meeting
held on
Friday, 11 November 1994
at 3 p.m.
New York

SUMMARY RECORD OF THE 32nd MEETING

Chairman: Mr. CHATURVEDI (India)
(Vice-Chairman)

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In the absence of Mr. Lamptey (Ghana), Mr. Chaturvedi (India), Vice-Chairman, took the Chair.

The meeting was called to order at 3.30 p.m.

AGENDA ITEM 141: QUESTION OF RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE (continued) (A/49/22; A/C.6/49/L.4 and L.9)

1. Mrs. CUETO MILIAN (Cuba) said that, taking into consideration the questions posed by certain critical aspects of the security of United Nations and associated personnel, her delegation had important reservations as to the letter and spirit of some provisions of the draft convention. The scope of the convention had not been clearly defined. The article on definitions should be more precise, and its relationship to the penal provisions contained in other articles taken into account. "United Nations operations" should essentially mean peace-keeping operations authorized by the Security Council with the consent of Member States and directed and controlled by the United Nations. The Charter of the United Nations stated clearly in Article 2, paragraph 7, that nothing contained in the Charter should authorize the United Nations to intervene in matters which were essentially within the domestic jurisdiction of any State. All arrangements adopted must therefore be founded on the principle of the agreement of all States involved in the establishment of the peace-keeping operation. In a statement made on 30 May 1990, the President of the Security Council affirmed that peace-keeping operations should be undertaken only with the agreement of the host country and the parties concerned and urged all parties to help the United Nations to fulfil its mandate by facilitating the deployment of troops and the smooth functioning of the operation.

2. Article 9 of the draft convention should not restrict the discretionary power of States to determine the most appropriate and expeditious means by which to incorporate an international legal instrument into their internal judicial system. The exceptions provided for in article 20 should not have the effect of limiting the principle of the sovereignty of States nor the principle of obtaining their prior agreement.

3. Her delegation recognized the important contribution made by United Nations and associated personnel to the maintenance of international peace and security, and condemned any action or deliberate attack against them. Equally, it recognized that effective measures must be adopted in order to prevent and punish such acts. However, that objective could be achieved only if the spirit and letter of the convention reflected the delicate balance of interests and principles underlying that question, and if the convention became an effective and universally accepted instrument not only for States providing troops, but equally for host States. The signature to and ratification of the future convention by Cuba would depend on the effectiveness and universality of that instrument, as well as on the compatibility of its provisions and aims with the fundamental principles of international law, such as the sovereignty of States and non-interference in internal matters.

4. Ms. DAUCHY (Secretary of the Committee) said that Namibia and the Republic of Korea had become sponsors of draft resolution A/C.6/49/L.9.

AGENDA ITEM 143: CONVENTION ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY (A/C.6/49/L.2)

5. Mr. ROGACHEV (Russian Federation) said that a convention on jurisdictional immunities of States and their property would make economic and other relations between States and economic agents more transparent, and that efforts to produce such a convention should be continued. The last series of negotiations had not succeeded because some delegations had not shown the political will necessary to arrive at a compromise. Although some differences had, to a certain extent, been settled during informal consultations, his delegation felt that, in future, negotiations should take place within the framework of a diplomatic conference. The convention should have a global character and would require the participation of a large number of States. Delegations to a conference would also have much wider powers than during informal consultations. The Russian Federation was open to all constructive proposals which would lead to a solution to the problem, and it refused to consider the situation as hopeless.

6. Ms. SAEKI (Japan) expressed the hope that the draft articles on the jurisdictional immunities of States and their property would be adopted as soon as possible and was glad to see the pragmatic approach adopted during the consideration of them. That approach should facilitate the establishment of a consensus on the range of activities to which the jurisdictional immunities should be applied. There were still important differences, however, notably on the question of the criteria to be used to determine the commercial character of the contract for transaction and on the question of measures of constraint.

7. The first question was fundamental. Her delegation felt that the suggestion proposed by the Chairman of the informal consultations, which would give States the option of indicating the potential relevance of the criterion of purpose under their national law and practice, was not sufficient to reconcile the views of States which felt that the nature of a contract or transaction should be the primary criterion for determining whether it was of a commercial character, and those whose view was that the purpose of the transaction should also be an important criterion. The criterion of purpose was too subjective and the criterion relating to the nature of the contract, while essential, was too vague to be applicable in all cases. It was therefore necessary to elaborate on the latter criterion in order to make it more precise and concrete and limit the possibilities for arbitrary interpretation.

8. With reference to the measures of constraint against the property of a State, her delegation was of the view that States should concentrate on defining the properties against which measures of constraint might be taken, and the degree of connection between such State property and the dispute in question.

9. She drew the Committee's attention to the question of the treatment to be accorded to the armed forces of one State stationed in another State. The status of such forces and their privileges and immunities were generally

provided for in an agreement between the two States, on the basis of a delicate balance between their interests, and often dealt with jurisdictional immunity. Therefore, the establishment of uniform multilateral rules covering civil jurisdictional immunity for foreign armed forces stationed in a host country could affect that bilateral balance, and the treatment to be accorded to the armed forces in question by virtue of those roles could be at variance with the nature of the bilateral relations existing between the two States. The Japanese Government therefore considered the question of the jurisdictional immunity of foreign armed forces should be regulated by bilateral agreements between the sending State and the host State, the armed forces of a State stationed on the territory of another State being in all cases excluded from the scope of the present draft articles and from any convention which might result therefrom.

10. Miss BARRETT (United Kingdom) welcomed the informal consultations concerning the draft articles on the jurisdictional immunities of States and their property, which had enabled delegations to reconcile their views on the basic issues raised, in particular regarding the immunity of constituent units of a federal State and contracts of employment. None the less, she still had doubts about whether article 10, paragraph 3 (Commercial transactions), relating to State responsibility should be included in a convention on jurisdictional immunities, although she was willing to reflect further on the matter. There remained, however, several other issues the future of which was not at all clear.

11. First, with regard to the criteria for determining the commercial character of a contract or transaction, she could not accept the suggestion by the Chairman of the informal consultations to give States the option of indicating the potential relevance of the purpose criterion under their national law and practice, by means of either a general declaration in relation to the convention or a specific notification to the other party to the contract or transaction. For if it were possible for a court rule that a commercial transaction in fact enjoyed immunity owing to a governmental purpose which had not been disclosed to the private party at the time the transaction was concluded, commercial uncertainties might result. None the less, for the sake of the delegations in favour of the purpose criterion, her delegation was willing to accept that the purpose could be taken into account by the court if the parties had so agreed at the outset. However, it was not reasonable to expect a private party, which might be a small trader, to have to research general declarations made by States before entering into transactions with them, when they might not even realize that immunity was a potential problem. Clearly, more work had to be done on the issue, which was central to the convention, before a generally acceptable solution could be found.

12. Secondly, the question of measures of constraint against State property was a fundamental area of concern. No codification of the matter would be acceptable unless it provided a proper basis for enforcement of judgements in cases where it had been established that the State involved had no immunity. In that respect, the compromise solution on article 18 put forward by the Austrian delegation was an interesting one, since it reconciled the idea of allowing the State additional time to make arrangements to comply with the judgement against

it with the need for less restrictive provisions on measures of constraint once that grace period had expired. Unfortunately, the solution had not yet attracted sufficient support to provide a basis for a compromise on article 18.

13. Given the disagreement still outstanding on central issues, her delegation had reached the conclusion that at the present session it was premature to convene a conference to negotiate such a convention. It would be a profound mistake to take such a decision when there was no real prospect of reaching agreement and would risk setting back the process of codification in that area of law indefinitely.

14. Her delegation therefore proposed that the current session of the General Assembly should decide to allow States time to reflect on the issue and the chance to consider more carefully the trends and developments in the law and the scope for compromise, and to conduct any further national consultations which they might find useful, for instance with those who had practical experience of commercial law. It recommended that a fresh look should be taken in four or five years' time at the substantive issues and the Commission's recommendation to convene a conference.

15. Mr. CALERO RODRIGUES (Brazil), reviewing the work carried out by the United Nations on the jurisdictional immunities of States and their property, said that although the international community as a whole recognized the need to adopt a convention on the subject, the work of the Working Group in 1992 and 1993 and the consultations held in 1994 had identified problems but failed to reach any general agreement. Although there was disagreement on few issues, they were none the less important. They included the concept of a State for purposes of immunity; the criteria for determining the commercial character of a contract or transaction, a matter on which agreement would be reached shortly; the concept of a State enterprise; and the more delicate issue of measures of constraint against State property.

16. He agreed with the United Kingdom representative that there was little chance of reaching agreement at present, but felt that the Commission should not wait too long before convening an international conference to study the draft articles. He was convinced that delegations would show more willingness to make concessions during such a conference. To that end his delegation had prepared a draft resolution, which had gained the support of several Latin American delegations. The resolution sought to reconcile the views of delegations which wished the conference to be held shortly and those who preferred to wait. His delegation felt that the General Assembly should take a decision at the present session on the principle of holding an international conference of plenipotentiaries, in line with the recommendations of the International Law Commission. The date and venue of the conference and the arrangements for the preparatory work would be decided by the General Assembly at its fifty-first session.

17. Mr. XU Guangjian (China) said that it was particularly important to conclude an international convention on jurisdictional immunities of States and their property, since international practice in the matter was far from being

uniform. However, in no way should the practice of certain States be held up as a universal rule. The draft articles prepared by the Commission, which took full account of the views and interests of countries in favour of limited immunity, should therefore be given due recognition.

18. His delegation none the less wished to reiterate its position on a few key issues dealt with in the draft articles. First, with regard to the criteria for determining the commercial character of a contract or transaction, although the nature of the contract was a major criterion, the purpose was also relevant. In many cases, the commercial activities of a State were closely linked to the general interest; making the nature of a contract or transaction the only criterion would not cover all situations. However, in order to make the relevant provisions clearer and dispel any uncertainty, his delegation was willing to give serious consideration to the proposals put forward by the Chairman of the informal consultations on the draft articles.

19. Secondly, a distinction must be drawn between the State and State enterprises which had a separate legal personality. They were independent in their management, were responsible for their own profits or losses and were capable of bringing suit. In theoretical and practical terms, they should not be seen as part of the State. Legal proceedings against them should not involve the owner State and vice versa unless the State explicitly undertook an obligation of guarantee or gave its authorization to that end. The idea that the independence of State enterprises would lead to fraud or unfairness was not justified. Even from the standpoint of the principle of State responsibility, the action of enterprises that had a separate legal personality and were therefore different from the State could not be attributed to the latter. Otherwise, there was a serious risk of arbitrary recourse to legal proceedings against foreign countries, which would give rise to injustice and tension in international relations.

20. Thirdly, the question of measures of constraint, attachment, impounding or forced execution regarding the property of a foreign State without any distinction would inevitably lead to tensions among States. Immunity from jurisdiction with regard to legal proceedings and immunity from execution were two different concepts. The fact that a State waived the former did not mean that it also waived the latter. Both required an explicit waiver in writing by the State. Concerning specific measures of restraint, his delegation was opposed to the attachment of State property prior to judgement and supported the provisions in the Commission's draft articles on linkage between the State property against which judgement was to be executed and the agencies or instrumentalities which sued or were being sued. To set a time-limit for a State to execute the judgement of a domestic court of a foreign State, to make such execution a treaty obligation or to introduce dispute settlement mechanisms into the convention would only make the question of State immunity more complex and therefore impede early agreement on a convention.

21. Lastly, his delegation believed that the consultations of the Committee's Working Group over the past three years had demonstrated that, although differences remained on the question of State immunity, the draft articles

prepared by the Commission had, to the greatest extent possible, reflected the compromises reached between various positions. It therefore believed that great caution should be exercised in considering the convening of an international conference on the subject.

22. Mr. MARTENS (Germany) said he believed that since the discussions on the draft articles on jurisdictional immunities of States and their property had once again proved that fundamental differences of opinion continued to exist, the convening of a codification conference at the current stage would be in vain. Neither did he believe that it would be useful to continue the discussion in the Sixth Committee. Instead, it would be preferable to take a fresh look at the draft articles in a few years' time. An analysis of the development of international law in the field gave him confidence that the differences of opinion that prevented a compromise at the current stage could have vanished by then. His delegation continued to maintain its view, however, that with regard to which criteria should prevail in determining whether a contract or a transaction was of a commercial nature, only the objective nature of a contract or a transaction involving a foreign State, and not its subjective purpose, could determine whether the State was entitled to immunity. Legal transactions with foreign States would carry a risk impossible to calculate if the purpose of State actions were to constitute a criterion. In the course of the informal consultations, various compromise proposals had been presented which admitted a reference to the purpose of a transaction if that purpose was relevant to the invocation of immunity under the national law of the State concerned. Those proposals would make it too difficult for a party involved in a transaction with a foreign State to predict whether it would be able to pursue its claim in court. Furthermore, the question of reciprocity would arise, since the granting of State immunity would necessarily differ according to the applicable law.

23. Moreover, the idea of requiring a general declaration by a State to refer to the criterion of purpose would solve none of the problems posed. Since such a general declaration would be unable to take into account changes that might occur in the law and practice of a State, it would remain difficult for the private party to predict in which situations the contracting State could invoke immunity. A specific notification by the State concerning the potential relevance of the purpose criterion would be preferable to a general declaration, although that solution still left too much uncertainty in that it did not require the consent of the private party.

24. If, in addition to establishing the nature of the transaction as the primary criterion, the parties could also expressly agree to the designation of a transaction as non-commercial, the granting of immunity would not be left to the discretion of a foreign State involved in the transaction. The merit of that proposal was that, in cases of doubt, the objective nature of the transaction would be the decisive criterion.

25. In his delegation's view, the issue of State immunity and enforcement measures was an essential component without which the draft articles would be robbed of their justification. The provision of draft article 18, paragraph 1 (c), according to which enforcement measures would be restricted to

property with some connection to the claim, constituted a limitation of the liability of the foreign State that went too far, since it would amount to a limited exemption from the financial consequences of commercial transactions engaged in by a State. The interest of a State party to a transaction was already sufficiently protected by the remaining limitations contained in articles 18 and 19.

26. Prejudgement measures should be subject to the same legal regime as postjudgement measures. The exclusion of measures of constraint intended to afford temporary protection could endanger the implementation of judgements against a State party in cases where it did not enjoy immunity.

27. As for the treatment of State agencies or other legal entities connected with the State, the question was primarily whether, as compensation for the liability of such entities, it would be possible in certain cases to have access to the property of the parent State. Under those circumstances, to exclude any possibility of recourse to the State would enable the latter to avoid financial liability for commercial transactions by setting up independent entities.

28. Concerning the granting of immunity in the case of contracts of employment involving a State, his delegation supported protection of the employee to the greatest possible extent.

29. Concerning the cost of legal proceedings when the State was the plaintiff, under article 22, paragraph 2, a State was not required to provide security, even as plaintiff. Since that would constitute an unfair risk for the defendant regarding the cost of the proceedings, that provision should be changed.

30. His delegation pointed out once again that dispute settlement procedure would substantially help in the actual implementation of a convention on jurisdictional immunities of States and their property. It would therefore be presenting a proposal along those lines when the draft articles were being reviewed.

31. Lastly, his delegation remained committed to the adoption of a convention on jurisdictional immunities of States and their property in the framework of a codification conference, as such a convention would undeniably provide for more certainty with regard to State immunity.

32. Mr. STRAUSS (Canada) said that it was clearly in the interest of the international community to have a convention that both codified and progressively developed international law in the area of jurisdictional immunities of States and their property and enjoyed sufficient support to ensure that most States became parties to it. Much effort had been put into achieving that goal in the Commission, in the Working Groups that had met in 1992 and 1993 and during the consultations that had taken place earlier during the current session of the General Assembly. His delegation had reluctantly concluded, however, that the achievement of that goal would not be possible at the current stage due to the differences which existed among significant numbers of States on issues that were fundamental to such a convention. The Commission was to be

commended for the quality of the draft convention that it had prepared in which the views of most members of the international community were taken into account. Tribute should be paid in particular to Mr. Calero-Rodrigues, who had chaired the meetings of the Working Groups, as well as the consultations. Unfortunately, however, even skills of his order could not reconcile the irreconcilable. The issues had been defined clearly and the positions stated clearly. Until State practice had been developed further and taken a more focused direction, or until States were willing to alter their positions significantly to achieve a compromise, there appeared to be little likelihood of a consensus in the immediate future.

33. His delegation therefore supported postponing consideration of the matter for the time being. Sending a text to a diplomatic conference prematurely might produce two equally undesirable results. On the one hand, the failure of such a conference to reach a compromise would damage the Commission's credibility and affect the process of developing international law in the United Nations. On the other, acceptance by a conference of a convention that few States would sign or ratify would have similar consequences. The need to ensure effective use of the budgetary resources of the United Nations also militated in favour of postponing consideration of the question. It was to be hoped that the delay would allow the positions of Governments on the fundamental provisions to converge sufficiently to allow the conclusion of a convention that could command widespread support.

34. Mr. KIM (Republic of Korea) said that his delegation generally agreed with the alternatives solutions for several substantive issues proposed by the Chairman of the informal consultations, Mr. Calero-Rodrigues. However, despite the potential for compromise in those proposals, his delegation was concerned that they might deviate slightly from the general trend of accepting restrictive immunity by giving States considerable latitude in order to broaden the options available to them. Also, while the Chairman's proposals would ensure a considerable degree of certainty in terms of participation by States, they might change the convention in such a way as to lead to inconsistent application by the parties. His delegation feared that seeking solutions only on the basis of compromise could eventually result in a unduly complex structure with respect to the convention regime.

35. His country was among those that supported the restrictive theory of State immunity in the context of the codification and progressive development of international law. From that perspective, a number of comments were in order regarding the issues discussed during the informal consultations. First, with respect to the criteria for determining the commercial character of a contract or transaction, giving States full discretion in applying the purpose criterion might allow them arbitrarily to disregard the nature of the contract or transaction. Consideration should therefore be given to how the discretion of States could be limited without prejudice to the positive elements in the Chairman's suggestion to permit the use of two criteria. Also, with respect to notification to the other, private party, it would be desirable to set the time-limits well before the conclusion of a contract.

36. Second, with regard to the issue of contracts of employment, provided for in article 11, his delegation agreed with many others that the provisions in paragraph 2, subparagraphs (a) and (c), might encroach on a State's interest in protecting its domestic labour force. Furthermore, subparagraph (a) seemed too general in that it did not lay down criteria for deciding which functions were closely related to the exercise of governmental authority. He suggested three possible ways of clarifying the general issue: drawing up in a separate annex an exhaustive list of employees entitled to immunities; inserting several broad categories of employees in subparagraph (a); or adding a separate provision to the effect that dual criteria would be applied, as in the case of commercial contracts or transactions.

37. As for subparagraph (c), he feared that it might be irreconcilable with the principle of non-discrimination based on nationality. It appeared to deprive nationals of a third State of any legal protection. That subparagraph should therefore be deleted and the matter left to the States in their domestic legislation. If it was not, then, as proposed by the Australian delegation to the Working Group in 1993, the text might stipulate that employer States could invoke immunity only in proceedings filed by their nationals or residents at the time when the contract of employment was concluded.

38. Third, concerning measures of constraint against State property, his delegation fully supported the Chairman's proposal, since voluntary compliance by States was the sole means of implementing measures of constraint.

39. In conclusion, he hoped that consensus on the outstanding issues could be reached very quickly. He was convinced that completion of the work on the convention on jurisdictional immunities of States and their property would be a milestone in the codification and progressive development of international law.

40. Mr. TRAUTTMANSDORFF (Austria) said that, three years after the Commission had presented its draft articles, there was still considerable doubt as to whether the texts in question were sufficiently mature to warrant early convening of a diplomatic codification conference. No one questioned the Commission's enormous efforts or the outstanding quality of its work. It had endeavoured to reconcile conflicting elements, such as the nature and purpose criteria for determining the commercial nature of a transaction, and to devise definitions that covered as many constitutional systems as possible. Regrettably, it had not been able to bridge the gaps between the different views. Those gaps were due not to the "whims" of the participating experts but to basic differences among the various legal systems. It was therefore important that the Commission had made the basic legal approaches taken very clear by preparing carefully worded commentaries on the different draft articles.

41. Indeed, the ensuing discussions in the Working Group, skilfully led by Mr. Calero-Rodrigues, had revealed clearly the breadth of the gaps, as well as the fact that they essentially involved basic notions on which many provisions of the draft were dependent. Nevertheless, the manner in which the Chairman had organized the Working Group's discussions had made some reconciliation of

positions possible, as in the case of the nature and purpose criteria. The Chairman's very concise report on the informal consultations, particularly his conclusions, could provide an extremely useful basis for future work on the draft articles submitted by the Commission. The format employed by Mr. Calero-Rodrigues, namely definition of the issues still pending, followed by presentation of possible bases for compromise, should allow very focused consideration of those issues. The quality of the Chairman's conclusions was worthy of the highest praise. Nevertheless, the report showed that much remained to be done in order to turn the draft articles into universally accepted rules.

42. His delegation believed that a decision with respect to further work should be taken during the current session of the General Assembly. There were two possible options. The first would be to entrust the responsibility for reconciling the various views to an early codification conference, bearing in mind that its failure would be a serious blow to the codification of rules on the jurisdictional immunity of States. The second would be to avoid taking a hasty decision on the date of a diplomatic conference and to continue the preparatory work for such a conference in order to improve the chances of its success. Given the situation, his delegation favoured the second option. It thought that the conclusions of the Chairman of the Working Group merited further careful, detailed consideration by Governments with a view to clarifying the possible options for a viable compromise on basic issues while avoiding the temptation of trying to impose any one legal approach by means of political pressure or majority rule. Thus his delegation believed that a decision on the exact date of a conference should be postponed until it was possible to assess the chances for the success of such a conference with relative certainty.

43. Moreover, his delegation believed that the definitive adoption of the texts relating to the statute for an international criminal court and the law of the non-navigational uses of international watercourses should be given priority, and would, in any case, represent a heavy burden of codification for the international community for another two or three years. His delegation, however, did not share the view that the whole of the preparatory process should be placed on hold for several years. The content and structure of the conclusions of the Chairman of the informal consultations provided an excellent basis for once again inviting comments by States. States could base their comments on the conclusions of the Chairman contained in document A/C.6/49/L.2, to whose structure they should be linked. In particular, States could indicate to what extent the compromise solutions suggested by the Chairman of the informal consultations or the compromise texts identified as such in the draft articles of the Commission could serve as a basis for accommodating their particular concerns. Those comments could be once again considered by the Working Group or another expert body meeting during one of the forthcoming sessions of the General Assembly. Such a meeting would require more than just a few days, however, and the body concerned should have a clear mandate to prepare a diplomatic conference by defining the core issues which the conference would have to decide and refining the solutions for a possible compromise.

44. In the light of the draft articles and the commentaries submitted by the Commission, together with the debates within the informal consultations and the compromise proposals put forward by its Chairman, the likelihood of a broadly accepted solution being found for the issues at stake varied. With regard to article 2, paragraph 1 (c), and the distinction between acta jure gestionis and acta jure imperii, the proposed solution of applying the nature criterion while providing for the possibility of agreeing on the application of the purpose test by means of a declaration or notification seemed to provide a realistic basis for a solution. Regarding the concept of a State as defined in article 2, paragraph 1 (b), a solution similar to that proposed by the Chairman of the informal consultations seemed sufficiently flexible to be broadly acceptable. As for the concept of a State enterprise covered by article 10, paragraph 3, a pause pending the convening of a diplomatic conference could indeed facilitate a solution, as many States were in the process of privatizing their State enterprises or of organizing them as legally independent bodies. Many States were developing relevant judicial practice within their legal systems.

45. His delegation had played an active part in efforts to accommodate the different approaches to the application of measures of constraint to satisfy valid judgements against a State or State property. The relevant provisions were contained in articles 18 and 19. Considerable efforts were still required to identify solutions that were acceptable to the different legal systems and to perfect ways of enforcing judgements. The main issue was to make further refinements in procedures guaranteeing the satisfaction of legally valid and binding judicial claims against a State and its property while minimizing interference with the sovereignty and official activities of States. As the Chairman of the informal consultations had observed, the possibilities for refining the compromise solutions had not been fully exhausted, for lack of time. Although Austria favoured an extensive approach as far as the execution of legal claims against State property was concerned, the possibilities outlined by the Chairman for possible solutions went in a direction which to a large extent met with his delegation's support. A solution on the issue of prejudgment measures also largely depended on the application of post-judgement measures of constraint. As indicated in the Chairman's conclusions, the possibilities of finding universally accepted solutions with regard to measures of constraint were, furthermore, closely interrelated with the existence of a set of rules on the settlement of disputes, which should be carefully defined before a conference was convened. The fact that State immunity to a large extent involved the relationship between a State and private persons probably required a far more sophisticated system than conventional procedures for settling disputes between States. The proposals put forward in that respect were useful but did not yet meet those requirements.

46. His delegation believed that further efforts would have to be deployed in order to reach a level of preparation that justified the considerable investment of resources entailed by the convening of a diplomatic codification conference. It was well known that Austria, which had in the past hosted several codification conferences had assembled considerable experience in that field. At a time of budgetary constraint, future conferences on the codification of international law would have to be prepared to justify the expenditure they

entailed. Accordingly, it made little difference whether the resources were provided by the Government hosting the conference or by the United Nations. The proposals made by his delegation for further work on the issue were largely influenced by Austria's experience in that area.

47. Ms. JACOBSON (United States of America) said that her Government continued to support the codification of the customary international law principles of immunity on the understanding that such codification should reflect the most modern developments of the law and incorporate clear rules of restrictive immunity. Her delegation was gratified that the sessions of the Working Group and the informal consultations had produced several areas of agreement. Her delegation noted, in particular, the progress achieved on article 2, paragraph 1, concerning the definition of a "State" for the purposes of immunity. It also thanked the Chairman of the informal consultations for his creative proposal for compromise on the issue of the legal personality of a State enterprise in article 10, paragraph 3, which was of great interest to the United States. However, her delegation regretted that the consultations had failed to produce consensus on two key issues, namely, the criteria for determining the commercial character of a transaction and measures of constraint. On the first of those issues, the trend in customary law was clear: the only admissible criterion was the nature test. Without a clear and unequivocal provision to that effect, the United States would not be able to accept the convention. Moreover, the debates on measures of constraint had revealed wide differences of opinion among States concerning the fundamental question of whether State property was ever to be subject to judicial constraint. Clearly, more thought and further work was needed in that area.

48. The United States also noted that there were some significant gaps in the Commission's text. Article 11, in particular, concerning contracts of employment, failed to address the major issues in that sphere. They included the cutting back and reorganizing of diplomatic and consular facilities, the bankruptcy of mandatory social security systems and the conflicts between local labour laws and the ability of diplomatic facilities to perform their mission. It was unfortunate that nothing had actually been done to close those gaps.

49. The United States believed that the time had come to step back and reflect upon the still unresolved key issues of the convention. Prudence and good sense required that the international community take a few years to evaluate changes in customary law and practice in the light of the Chairman's proposed bases for compromise. It would then be able to return to the effort with, it was to be hoped, improved prospects of finding a common ground.

50. Ms. CARAYANIDES (Australia) said that her delegation remained of the view that a widely accepted convention on jurisdictional immunities of States and their property would be a contribution to international law and of considerable practical benefit, particularly in international commerce. Dealings between States and foreign natural and juridical persons were commonplace, and the jurisdictional immunities of States and their property was one of the areas of international law on which domestic courts were frequently called upon to rule. An international convention establishing universally applicable principles would

bring predictability, stability and, one would hope, simplicity to an area of international law in which there had always been a lack of uniformity and a considerable measure of uncertainty. Her delegation had hoped that the informal consultations held in the current year might succeed in identifying solutions to the major outstanding issues. It regretted that its hope had not been fulfilled.

51. In the informal consultations, five issues had been considered, namely, the concept of a State for purposes of immunity (art. 2, para. 1 (b)), the criteria for determining the commercial character of a contract or transaction (art. 2, para. 1 (c) and art. 2, para. 2), the concept of a State enterprise or other State entity in relation to commercial transactions (art. 10, para. 3), contracts of employment (art. 11) and measures of constraint against State property (arts. 18 and 19). It was her delegation's impression in relation to the first, third and fourth of those issues that, although no specific proposals had yet been agreed upon, the possible bases of compromise identified by the Chairman could prove fruitful. On the other hand, delegations were still at some distance from agreement on article 2, paragraph 2, dealing with the use of the criteria of nature and purpose for characterizing a transaction as commercial, and on the question of measures of constraint, especially in relation to article 18.

52. With regard to the criteria for determining the commercial character of the contract or transaction, the main division of opinion was between States which believed the nature of a transaction should be taken into account in determining its commercial character and those which considered that the purpose of the transaction should be considered. While her delegation would prefer to have the nature criterion applied as the sole test, it had no objection in principle to the purpose test being applied subsequently by a court if the parties knew before a contract was entered into that such would be the case and had agreed to enter into the transaction on that basis.

53. The Chairman of the informal consultations had suggested that a compromise solution might be to give the State concerned the option of indicating that purpose was the relevant criterion under its national law and practice, either by means of a general declaration in relation to the convention or by means of a specific notification to the other party in relation to a particular contract or transaction, or a combination of the two. That would be a compromise which addressed the concerns of both the States which wanted the purpose of a transaction to be taken into account and the States which were concerned at the uncertainty that would engender. If compromise could ever be achieved on that issue, that was the approach most likely to succeed. However, by the end of the informal consultations, it was clear that not all delegations were ready to accept that formulation. Furthermore, even among those which did, there was a further issue dividing them. Her delegation, for instance, considered that it should always be open to the parties expressly to agree whether or not a transaction was commercial. Other delegations, on the other hand, were of the view that if purpose was a relevant criterion, the parties should not be able to agree to the contrary. Thus, there were still obstacles to general agreement on article 2, paragraph 2.

54. The situation with respect to measures of constraint against State property seemed even more difficult. The principal concern of Australia and others was to ensure that where judgement was given against a foreign State in accordance with the draft articles, the judgement would in fact be satisfied. Under the draft articles, the conditions for execution were so restrictive that they excluded the possibility of enforcement proceedings in many cases. One possibility considered in the informal consultations had been to delete the requirement of a connection between the judgement and the property in cases of post-judgement execution while retaining such a requirement in cases of interim precautionary measures. That was a compromise which her delegation could support, but again there had been no general agreement.

55. However, Australia did not insist that a strengthening of measures of constraint was the only possible solution. Measures of constraint could only be effective where the defendant State had assets in the territory of the forum State. A satisfactory solution might therefore be to incorporate in article 18 additional elements for ensuring that judgements were effective, such as an obligation to comply with a judgement given in accordance with the draft articles, the possibility of recognition and enforcement of judgements in third States, and appropriate dispute settlement procedures. It must, however, be acknowledged that there had also been no general agreement on those proposals in the informal consultations.

56. Concerning the Commission's recommendation that a conference of plenipotentiaries should be convened to conclude a convention on the subject, her delegation continued to be firmly of the view that a date for a diplomatic conference should not be set until the outstanding issues of principle had been settled. If it had not been possible to resolve those issues at three successive sessions of the General Assembly, there could be little prospect of a solution being found in the limited time available at a diplomatic conference, especially since the diplomatic conference would need to address in detail each of the other provisions of the draft articles.

57. At the same time, her delegation did not think it profitable to hold further informal consultations at the next session of the General Assembly. The issues had now been discussed exhaustively and all avenues of compromise had been explored. Had there had been any possibility of achieving general agreement, it would have been found. The inability to identify generally acceptable solutions to all issues should not be attributed to a lack of goodwill on the part of delegations. It was a reflection of the nature of the subject-matter. There had always been significant divergences in the practice of States in relation to foreign State immunity, which had been continuously evolving since the previous century. Perhaps if that evolution was permitted to continue a little longer, a point might be reached in the near future when a convention could be concluded on the topic. That goal should therefore not be abandoned, and the Committee should take up consideration of the item in several years' time, with a view to ascertaining whether there had been developments in the interim. It would be useful to invite States, in advance of resumption of discussions, to submit their written comments on the possible bases for compromise identified by the Chairman of the informal consultations in document

A/C.6/49/L.2, and to request the Secretary-General to circulate those comments in order to facilitate the further consideration of those points. The Committee could then, in the light of those comments and of its own discussions, decide on further action.

AGENDA ITEM 137: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION (continued) (A/C.6/49/L.5)

58. Mrs. DAUCHY (Secretary of the Committee) announced that the Republic of Korea had joined the sponsors of draft resolution A/C.6/49/L.5.

The meeting rose at 5.15 p.m.

UNITED NATIONS

General Assembly

FORTY-NINTH SESSION

Official Records

SIXTH COMMITTEE
33rd meeting
held on
Monday, 14 November 1994
at 3 p.m.
New York

SUMMARY RECORD OF THE 33rd MEETING

Chairman: Mr. MADEJ (Poland)
(Vice-Chairman)

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In the absence of Mr. Lamptey (Ghana), Mr. Madej (Poland), Vice-Chairman, took the Chair.

The meeting was called to order at 3.35 p.m.

AGENDA ITEM 143: CONVENTION ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY (continued) (A/C.6/49/L.2)

1. Mr. LEGAL (France) said that, far from being an avowal of failure as some delegations had implied, the report by the Chairman of the informal consultations (A/C.6/49/L.2) had set forth clearly the disagreements on the matter of the jurisdictional immunities of States and had offered suggestions for resolving them.

2. The customary rules governing the jurisdictional immunities of States were no longer as relevant as they had been in the past. States were increasingly involved in economic and commercial operations which were largely unrelated to their sovereign functions. Application of the customary rules was resulting in distortions and even inequities. Consequently, some States had enacted domestic legislation to strike a balance between the interests at stake. The existence of a number of different legal regimes on jurisdictional immunities was giving rise to uncertainty. There was thus a clear need for an international system of codification to establish the principle of the jurisdictional immunities of States and also, with an eye to balance and equity, to define the limits of that immunity. Such a definition must take into account the separate legal personality of States.

3. In drafting the articles on the jurisdictional immunities of States, the International Law Commission had endeavoured to achieve a balance between the principles of international law and recent legal developments in the field. Several issues were still unresolved. First, the scope of application of the draft articles had to be clearly defined. The articles should not dilute the concept of the State by applying it to an infinite number of subdivisions which did not perform acts in the exercise of their sovereignty. A State would be defined by being party to the convention. However, that did not exclude the introduction of an element of flexibility: as proposed by the Chairman of the informal consultations in document A/C.6/49/L.2, the immunity of a constituent unit could be recognized on the basis of a declaration made by a federal State.

4. A second area of disaccord had emerged with regard to the criteria for determining whether a contract or transaction was commercial or not, as dealt with in draft article 2, paragraph 2. In his delegation's view, the nature of the contract should be the primary criterion; however, the purpose of the contract was inseparable from and contributed to defining its nature. His delegation agreed that a State which considered the criterion of purpose to be irrelevant should not be required to apply that criterion. The circumstances under which jurisdictional immunity could be invoked by the contracting State should be clear to all the parties concerned. In that connection, it had been

suggested that a State might either make a general declaration in relation to the convention or notify the other party in relation to a particular transaction. In any event, States should not be discriminated against on the basis of how they defined the scope of the applicable law.

5. The Chairman's suggestions with regard to article 11 were sensible and logical. Paragraph 2 (a) of article 11 stipulated that, in the case of contracts of employment, immunity from jurisdiction could be invoked if the employee had been recruited to perform functions closely related to the exercise of governmental authority. The provision should make it clear that those who performed functions which were closely related to the functions of the State were under special constraints and had a special relationship with the authorities and a certain discretionary power. Paragraph 2 (c) granted the State the right to invoke immunity from jurisdiction if the employee was neither a national nor a habitual resident of the State of the forum at the time when the contract of employment was concluded. That paragraph was incompatible with justice and protection of the individual and should be deleted. The rules of law must not vary according to the nationality of the person to whom they were being applied. There was a growing trend for workers to circulate freely from one State to another. In that context, paragraph 2 (c) represented a step backwards in terms of social law, which should apply to all persons equally regardless of their nationality.

6. The question of State immunity from measures of constraint was highly sensitive. The draft articles as a whole dealt with jurisdictional immunities, while articles 18 and 19 actually concerned measures of execution. His delegation had already pointed out the difficulties inherent in combining in one convention two matters which were related but fundamentally different. Given the differences among legal systems world wide, it was premature to envisage a system under which there would be an automatic obligation to enforce judgements rendered in a foreign State against all States. The Commission's definition of property which was likely to be affected by measures of execution appeared reasonable. To go any further might upset the balance of international relations and could in certain cases give legitimacy to arbitrary decisions.

7. A few other difficulties remained. It was generally agreed that provisions regarding aircraft and spacecraft should be incorporated into draft article 16 (Ships owned or operated by a State). The provisions dealing with modalities for the implementation of the convention could be improved. In general, however, the debate had centred on substantive issues which, in the view of some, might block the success of a diplomatic conference for the purpose of adopting a convention. His delegation was less pessimistic. Some States had already enacted domestic legislation to govern the relations between the State and commercial enterprises and thus were less interested in adopting an international convention. There was still a need, however, to codify the law in that area. States which had sufficient legislation could always choose not to ratify the convention or could make reservations to it. They should not prevent other States from adopting a much needed international convention which would serve as a general guide.

8. The representative of Brazil was fully justified in his plan to submit a draft resolution on the jurisdictional immunities of States and their property. The request of some States for a two-year period of reflection before attempting to organize an international conference seemed reasonable.

9. Mr. CHINOY (India) said that the Chairman of the informal consultations had suggested in his report (A/C.6/49/L.2), with regard to paragraph 1 (b) of draft article 2, under which the term "State" was defined, that the immunity of a constituent unit of a State could be recognized on the basis of a declaration made by a federal State. In the Chairman's view, that approach would allow greater flexibility in the light of the differences in the national laws of federal States. His delegation did not agree; in its view, the constituent unit of a federal State should be at all times considered as part of the State. There was therefore no need for a State to make a declaration to that effect.

10. Draft article 2, paragraph 1 (c), dealt with the definition of the term "commercial transaction". In that connection, the Chairman of the informal consultations had noted that a greater measure of certainty could be achieved by giving States the option of indicating the potential relevance of the purpose criterion under their national law and practice either by means of a general declaration in relation to the convention or a specific notification to the other party in relation to a particular transaction. His delegation was not in favour of modifying article 2, paragraph 1 (c). It would be very difficult for a State to make such a general declaration because each case had to be decided individually by the court. Requiring that a declaration be made in every case would be cumbersome and might also cause the other party to repudiate the contract.

11. Draft article 10, paragraph 3, dealt with the State enterprise or other State entity in relation to commercial transactions. The Chairman of the informal consultations had suggested that the scope of article 10, paragraph 3, should be modified by stating three specific conditions under which the question of the liability of a State could arise in relation to a commercial transaction engaged in by a State enterprise, namely, where: (a) the State enterprise engaged in the transaction as an authorized agent of the State; (b) the State acted as a guarantor of a liability of the entity; or (c) the State entity had misrepresented its financial position or had subsequently reduced its assets to avoid satisfying a claim. While it could accept condition (b), his delegation could not endorse the other two conditions. Paragraph 3 of article 10 was satisfactory as it stood and should not be amended.

12. With regard to draft article 11 (Contracts of employment), the Chairman of the informal consultations had suggested the possibility of clarifying the wording in paragraph 2 (a) and of deleting paragraph 2 (c). His delegation was not in favour of those proposals. Paragraph 2 (a) was sufficiently clear as it stood. Paragraph 2 (c) was important because it established a necessary link between the employee and the court of the foreign State involved.

13. With reference to draft article 18 (State immunity from measures of constraint), the Chairman of the informal consultations had noted that in view of the complexity of the issue, it had not been possible to arrive at a compromise solution. In his delegation's view, article 18 was well balanced and should not be modified.

14. The draft articles in general were balanced and took into account the interests of both developing and developed countries. In his view, the articles were not in need of modification. The best course would be to work towards the early convening of a conference of plenipotentiaries which would finalize a convention on the jurisdictional immunities of States.

15. Mr. SIDI-ABED (Algeria) said that the Commission had elaborated a set of draft articles which, once adopted in the form of a convention, would fill an important legal gap by dealing with a basic aspect of economic and commercial relations between States. The convention must take into account State practice as well as the legitimate interests of States based on the wide variety of juridical systems and economic circumstances in the world. In so doing, it would serve a dual purpose: it would codify the law in a particularly sensitive area and would help to reduce any international tensions which might arise owing to the absence of clear and precise regulations in that field.

16. The draft articles represented a balanced, realistic synthesis of the major substantive issues. The solutions that had emerged by consensus during the informal consultations would no doubt contribute to that equilibrium and should be widely acceptable.

17. With regard to the criteria for determining the commercial character of a contract or transaction, it was his view that attempting to derive an international norm from the practice of certain States while overlooking the practice of others could only complicate the task of codification. He therefore endorsed the compromise proposed by the Chairman of the informal consultations, under which account was taken both of those States which considered the nature of the contract to be the primary criterion for determining the nature of a transaction and of those which considered the purpose of the contract to be the primary criterion. While the suggested compromise continued to grant priority to the criterion of the nature of the contract, it left the contracting parties free to clarify the situation through a bilateral agreement or through a general declaration or a specific notification. Such an approach might serve as a starting point for further work. In contrast, letting a foreign court decide the fate of a State in its commercial relations was not an equitable solution, given the exclusive competences conferred on the State under international law.

18. The question of State immunity from measures of constraint, as dealt with in draft articles 18 and 19, was also of particular importance to his delegation. The absence of jurisdictional immunity for a State did not in any way attenuate or eliminate its immunity from measures of execution. The possibility of applying pre-judgement measures of constraint was inadmissible. The draft articles should include a reference to the link between property which was subject to measures of constraint, the claim and the contracting body or

entity involved. The articles did not, and rightly so, deal with measures of constraint ordered against the property of a State which was located in a third State. Such a matter would only hinder negotiations on an already complex matter.

19. His delegation could not endorse the proposal, made during the informal consultations, to make the application of measures of constraint a binding treaty obligation incumbent on States against which a foreign court had rendered a decision. The absence of similar rules under international law could not affect in any way a State's obligation to respect its international commitments and to honour its obligations in good faith. At the same time, it was reasonable to grant the State in question a period of time to carry out the measures of constraint which it had expressly accepted.

20. His delegation supported the reasonable approach suggested by the Chairman of the informal consultations and was in favour of convening a conference of plenipotentiaries for the adoption of an international convention in the area of jurisdictional immunities of States.

21. Mr. NATHAN (Israel) said that the Sixth Committee was faced with the problem of whether sufficient common ground existed on the major substantive issues for the conclusion of a convention on jurisdictional immunities of States and their property.

22. Two main issues remained to be resolved. The first was the question of the criteria by which the commercial character of a transaction should be determined. In his view, those criteria should be objective and definite. A private party entering into a contract with a State should be in a position to ascertain whether or not State immunity would be attached to that particular transaction. Those objectives could be achieved by establishing criteria which were generally applicable to the transaction, either by a general declaration or in reference to a specific transaction, rather than leaving the determination of the criteria to the discretion of the State.

23. The second major issue was that of the application of measures of constraint against State property. In his view, such measures should not be applied to the specific categories of property listed under draft article 19, which might also include State property not used or intended to be used for commercial purposes. At the same time, to restrain a successful litigant from taking measures of constraint against State property might unjustly deprive the litigant of the fruits of protracted and expensive litigation and leave him with an unenforceable judgement.

24. The reasoning with respect to enforcement measures applied equally to prejudgement measures of constraint, which in many cases might be required to secure property for the eventual satisfaction of a judgement given in favour of a plaintiff.

25. As he understood it, there was general agreement that the time had come to clarify and formulate those issues on which there were no clear-cut rules of international law and that it would be useful to conclude a convention on jurisdictional immunities of States. However, given the differences of opinion which continued to exist, it would not be advisable to convene a conference immediately. Nor would any useful purpose be served by resubmitting the draft articles to the International Law Commission. The proposals contained in the report of the Chairman of the informal consultations (A/C.6/49/L.2) could, however, serve as a basis for written comments by Governments and might lead to further consultations and, eventually, to the convening of a conference for the adoption of a convention.

ANNOUNCEMENT CONCERNING SPONSORSHIP OF DRAFT RESOLUTIONS

26. The CHAIRMAN said that Chile had become a sponsor of draft resolution A/C.6/49/L.6.

The meeting rose at 4.15 p.m.

UNITED NATIONS

General Assembly

FORTY-NINTH SESSION

Official Records

SIXTH COMMITTEE
34th meeting
held on
Tuesday, 15 November 1994
at 10 a.m.
New York

SUMMARY RECORD OF THE 34th MEETING

Chairman: Mr. MADEJ (Poland)
(Vice-Chairman)

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In the absence of Mr. Lamptey (Ghana), Mr. Madej (Poland), Vice-Chairman, took the Chair.

The meeting was called to order at 10.40 a.m.

AGENDA ITEM 136: UNITED NATIONS DECADE OF INTERNATIONAL LAW (A/49/323 and Add.1 and 2; A/C.6/49/L.10)

1. Mr. MARTENS (Germany), in his capacity as Chairman of the Working Group on the United Nations Decade of International Law, introduced the report contained in document A/C.6/49/L.10. He said that in its work, the Group had focused on two main issues: the revised guidelines for military manuals and instructions on the protection of the environment in times of armed conflict, and the state of preparation of the United Nations Congress on Public International Law. As a result of its discussions in that regard, the Working Group had proposed various modifications in the programme of activities for the third term of the Decade (1995-1996), which was set out in the annex to the report.

2. Mr. ZMEEVSKY (Russian Federation) said that the 1990s had been a decade of profound changes on the international scene and, in that context, the growing influence of international law and law in general was of great practical importance. The legal system would be a stabilizing element in Russian society as it evolved and moved towards democracy, economic reform and a State in which the rule of law prevailed. The new Constitution of the Russian Federation incorporated into the country's legal system generally accepted principles of international law and the provisions of treaties to which the Federation was a party and, consequently, those instruments prevailed over national legislation and were directly applicable. That fact had given new impetus to the role played by law in defending democracy and human rights and in maintaining stability. The study of international law and the training of experts in the main provisions of international law was of particular importance in an open society and was fundamental to enabling his country to assume its definitive place in the international community. With that in mind, in September 1994 his Government had established the Russian National Committee for the United Nations Decade of International Law, which was mandated to organize meetings and seminars and to prepare publications in order to disseminate international law more widely.

3. Among the activities carried out in connection with the Decade, in 1993 the Russian Federation had celebrated the 125th anniversary of the St. Petersburg humanitarian declaration concerning the protection of victims of armed conflict. In addition, a Russian-American seminar on the role of the United Nations in the development of the law of the sea had been held in Moscow in August 1994, with the participation of the United Kingdom, France, Germany, the Netherlands, Norway, the Commonwealth of Independent States and the Baltic States. In addition, a multi-volume manual in international law, the aim of which was to teach graduate students to appreciate international law as a universal human value, was being prepared for publication.

4. Progress made thus far during the Decade could be evaluated at the United Nations Congress on Public International Law to be held in 1995 and which, apart from being the first congress on that matter in the 50-year history of the United Nations, would help provide a general idea of the legal order which would be needed in the twenty-first century.

5. In April 1994, his Government had proposed the convening of a third international peace conference (A/49/151-S/1994/537, annex). Although the previous peace conferences, held at The Hague in 1899 and 1907, had not been able to prevent the conflagration of two world wars, they had been important events in the development of international relations and the affirmation of peace and had established the foundations of humanitarianism and justice. On the eve of the third millennium, the objectives which continued to merit particular attention were the strengthening of international peace and the consolidation of the legal principles which, in a multipolar world order, provided the basis of a new global balance. One way to realize those objectives was to convene a third peace conference and, given the views of the Movement of Non-Aligned Countries and the efforts that had been made by the General Assembly in the context of the United Nations Decade of International Law, he was certain that the idea would be well received. The conference programme might cover the strengthening of the mechanism for the peaceful settlement of disputes, including the possible review of the 1899 and 1907 conventions; the adoption of norms to fill the gaps in international humanitarian law; and the creation of an international criminal justice system to try those responsible for crimes against humanity and offences against peace and international law.

6. During the current session, and in particular in the Working Group on the Decade, some countries had demonstrated strong interest in the idea of such a conference, the purpose of which would be not only to commemorate the anniversary of the first peace conference at The Hague and the establishment of the Permanent Court of Arbitration but also to achieve concrete results and evaluate the development of international law in terms of improving the mechanisms for the peaceful settlement of international disputes.

7. According to the Secretary-General's report, there was a trend towards making arbitration procedures international in scope. In that context, the third peace conference might consider whether it was appropriate to elaborate an arbitration procedure to resolve an entirely new kind of conflict. On another matter, he shared the view expressed in the report of the Secretary-General that there was no effective system for the application of the basic norms of international law or for punishing those individuals who violated those norms. He therefore welcomed the effort, with the active participation of Switzerland and the International Committee of the Red Cross, to study procedures for monitoring the application of the norms of international humanitarian law, in accordance with the Declaration adopted in 1993 by the International Conference on the Protection of War Victims. In its draft resolution on the Decade, the Sixth Committee should endorse the work which was being carried out in Geneva, and his delegation would be making some suggestions in that respect to the sponsors of the draft. The proposed third conference could follow closely the work being done in Geneva and consider ways to make use of it in other forums

dealing with cooperative efforts to safeguard peace. While it was premature to mention any particular outcome, it was possible that the conference might adopt a declaration or conclude a convention which would be open for signature to any State wishing to become party to it.

8. The most important function of the conference would be to serve as a forum to consider the interaction of the fundamental legal problems of the twenty-first century, and the main outcome, the perfecting of a technology of peace and adapting it to the many challenges posed by international security and the diverse nature of the conflicts and of those participating in them. If sufficient progress had not been made in establishing an international criminal justice system, the conference could also consider that matter.

9. In 1995, the Russian Federation planned to organize a series of meetings of experts who had shown interest in the proposal, including the establishment of a group of supporters of the convening of a peace conference. His delegation was willing to discuss the content, organization and development of the conference and would welcome any suggestions in that connection from delegations.

10. Mr. ZIMMERMANN (Observer for the International Committee of the Red Cross (ICRC)) said that the International Conference on the Protection of War Victims, held in Geneva in 1993, had requested the Swiss Government to convene an intergovernmental meeting of experts to explore practical methods of facilitating the application of international humanitarian law. The experts would be submitting their report to the twenty-sixth International Conference of the Red Cross and the Red Crescent in 1995, which would adopt the relevant decisions. It was appropriate to recall the stages of the process initiated in 1993 by ICRC, since wars continued to wreak havoc in the world and civilian populations were the first victims of armed conflicts, as ICRC delegates had been confirming on all fronts.

11. It was therefore necessary to take action, and the follow-up measures initiated by the International Conference on the Protection of War Victims would provide a way to find concrete and effective measures to bring about greater respect for war victims. The International Committee of the Red Cross invited States and the Sixth Committee to give to the follow-up of the Conference the attention it deserved.

12. Paragraph 14 of General Assembly resolution 48/30 requested the Secretary-General to invite the International Committee of the Red Cross (ICRC) to report on activities undertaken by it with regard to the protection of the environment in times of armed conflict and to submit the information received to the General Assembly. That information was contained in the report of the Secretary-General on the United Nations Decade of International Law (A/49/323), the annex of which contained the Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict. The text had been drafted by recognized experts under the auspices of ICRC and reflected the comments submitted by States in that regard. One of the most effective ways of implementing the norms of international humanitarian law was by including them in the military manuals of national armed forces. Thus, the commanding officers

would be better acquainted with such norms and could ensure respect for them. ICRC therefore proposed that the Sixth Committee should invite States to take note of the Guidelines and to include them in the military manuals of their armed forces, which would thus become instruments for promoting international humanitarian law.

13. Finally, ICRC, which accorded special importance to the activities of the United Nations Decade of International Law and to the United Nations Congress on Public International Law to be held in 1995, hoped that the reaffirmation and implementation of international humanitarian law as a whole would be given the attention it deserved both in terms of programme activities and of the work of the Congress.

14. Mr. JONKMAN (Secretary-General of the Permanent Court of Arbitration) said that the Court had been established in 1899 with the mission of facilitating arbitration for the resolution of international disputes. By multilateral agreement, it was authorized to organize four of the settlement methods listed in Article 33 of the United Nations Charter: inquiry, mediation, conciliation and arbitration.

15. The declaration of the United Nations Decade of International Law had inspired the International Bureau of the Permanent Court of Arbitration to draw up a programme of activities aimed at improving the functioning of the Court. Since 1991, the following measures had been taken: (i) the Bureau had tried to make the legal advisers of States and other international lawyers more aware of the facilities and services provided by the Court; (ii) two new sets of procedural rules had been established: one for arbitration of disputes between States and the other for arbitration of disputes between a State and a private party; (iii) the Bureau had encouraged States not yet participating in the activities of the Permanent Court to accede to The 1907 Hague Convention for the Pacific Settlement of International Disputes; (iv) a conference of the members of the Court had been convened which had adopted two resolutions concerning the future of the Court and a possible conference in 1999 to celebrate the centenary of the first peace conference; (v) a Financial Assistance Fund had been established to compensate developing countries in some measure for the costs they incurred in connection with arbitration proceedings; (vi) the Bureau had dealt with an increasing number of requests under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) regarding the appointments or challenges of arbitrators; (vii) a Steering Committee had been constituted to make recommendations to the Council as to whether to revise The 1907 Hague Convention for the Pacific Settlement of International Disputes; and (viii) the Bureau was examining ways in which the Court might be used to resolve disputes between States and between States and private parties involving environmental issues and sustainable development.

16. The revitalized Court was not intended to compete with the International Court of Justice, since the forms of arbitral settlement were quite distinct from adjudication of disputes. States were free to choose which method was best suited to their needs. Both the International Court of Justice and the

Permanent Court of Arbitration had their own distinct roles, and together they provided a wide range of complementary settlement mechanisms.

17. The following were some of the special features of the Permanent Court of Arbitration: (i) it was competent to deal not only with disputes between States but also with disputes between States and private companies and other parties that were not States, such as international organizations; (ii) when constituting arbitral tribunals, the parties to a dispute might include members who were not lawyers but who had other relevant expertise, and the Court was therefore particularly appropriate to deal with disputes of a technical nature; (iii) it could organize the settlement of disputes comprising a large number of claims; (iv) it could organize a settlement of disputes for which parties sought a speedy resolution; (v) through modern procedural rules, the Court tried to restore the cost-effectiveness of the arbitral process; and (vi) it combined the advantages of an established institution with a maximum of flexibility and party autonomy.

18. The functioning of the Court was being decentralized so that an arbitral tribunal did not necessarily have to conduct its sittings at The Hague if it would be more cost-effective for the arbitration to take place at some other location, for instance where the dispute had arisen, since arrangements could be made through the local group of the members of Court to provide appropriate administrative support. Furthermore, since the high cost of arbitration often deterred developing countries from having recourse to international arbitration, the Financial Assistance Fund had recently been established, out of which developing countries might be permitted to draw for the purpose of setting off part of the costs incurred in the course of arbitral proceedings.

19. Finally, the Administrative Council of the Court invited all States that did not yet participate in the work of the Court to accede to The 1907 Hague Convention for the Pacific Settlement of International Disputes, requested Governments to contribute to the Financial Assistance Fund and urged developing countries having recourse to the arbitral settlement of disputes to apply for assistance from that Fund.

AGENDA ITEM 141: QUESTION OF RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE (continued) (A/C.6/49/L.9)

20. The CHAIRMAN said that Bulgaria, Germany, Italy and the Philippines had become sponsors of draft resolution A/C.6/49/L.9.

21. Mr. van BOHEMEN (New Zealand), speaking also on behalf of Ukraine, introduced draft resolution A/C.6/49/L.9 and said that wide consultations had been held on the text of the draft resolution, in particular on the substantive proposals it contained, namely: that the General Assembly should adopt and open for signature and ratification, acceptance or accession the Convention on the Safety of United Nations and Associated Personnel. It had been evident from both the consultations and the large number of sponsors from all regional groups that there was widespread support for the early adoption of the Convention. As

noted by the Chairman of the Working Group which had finalized the draft, it was widely acknowledged that the text, which was the product of a consensus negotiation, was not perfect. There were differing views and there were quite serious reservations with respect to the scope of the Convention and to the efficiency of the mechanism by which the Convention might be extended to operations outside the area of the maintenance of international peace and security. However, the draft Convention was a balanced package of rights and obligations which attempted to meet the essential objectives of all delegations. That balance was more likely to be upset than to be improved if the negotiations were to be prolonged or reopened on issues which had been thoroughly debated.

22. His delegation felt that the Committee was of the general view that it should proceed to the adoption of the text which had been negotiated the previous year in the Ad Hoc Committee established pursuant to General Assembly resolution 48/37. The adoption of the Convention would be an appropriate response to the cowardly attacks that continued to be perpetrated against persons defending the interests of the international community. Notwithstanding the continuing reservations which had been expressed about the draft Convention, the Committee was willing to adopt the draft resolution and thus the Convention, by consensus. Given the delicate balance within the text of the Convention, the text of the draft resolution had been deliberately kept simple and procedural, also bearing in mind the many precedents of similar resolutions adopted by the Sixth Committee. It would be highly appropriate to maintain that tradition with respect to the current Convention.

The meeting rose at 11.45 a.m.